Northwestern Journal of International Law & Business

Volume 33 | Issue 1

Fall 2012

Emerging Economies After the Global Financial Crisis: the Case of Brazil

Enrique R. Carrasco

Sean Williams

Emerging Economies After the Global Financial Crisis: the Case of Brazil

By Enrique R. Carrasco & Sean Williams***

Abstract: Emerging economies have rebounded relatively quickly from the 2008 global financial crisis, and despite various challenges they face resulting from the European sovereign debt crisis, they face bright economic futures. While many observers have focused on China and India, Brazil is an emerging economy that has enjoyed increasing visibility. This Article examines Brazil's evolution into an emerging economy, or given the market-based nature of the term, an emerging market economy (EME). The economic, social, political, and legal reforms that have contributed to Brazil's status as an EME have bolstered the power and legitimacy of its voice in international affairs, giving the country an important role in articulating a new global order as envisioned by former president Lula da Silva. However, its voice will resonate only to the extent it continues to address a number of challenges ranging from economic policy to corruption.

* Professor of Law, The University of Iowa College of Law; J.D., Georgetown University Law Center.

** J.D., The University of Iowa College of Law, 2012; B.A. Spanish, Certificate of Latin American Studies, Iowa State University, 2009.

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> *"The issues at the core of our concerns – the financial crisis, new global governance and climate change – have a strong common denominator. It is the need to build a new international order that is sustainable, multilateral and less asymmetric, free of hegemonies and ruled by democratic institutions. This new world is a political and moral imperative. We cannot just shovel away the rubble of failure; we must be midwives to the future! This is the only way to make repairs for so much injustice and to prevent new collective tragedies."*
>
> *President H. E. Luiz Inácio Lula da Silva*

I. INTRODUCTION

Emerging economies rock, so they say. While the United States struggles to recover from the 2008 global financial crisis and European countries have been mired in a sovereign debt crisis, emerging economies rebounded relatively quickly from the 2008 global financial crisis, and despite various challenges they face resulting from the European crisis, they face bright economic futures.

While many observers have focused on China and India, Brazil is an emerging economy that has enjoyed increasing visibility. Since 2003, it has pursued an orthodox macroeconomic framework that brought inflation under control, produced primary budget surpluses, decreased foreign debt, and increased foreign reserves. The resultant economic growth reached a peak in 2010, when it registered a 7.5% annual growth rate in gross domestic product,[1] which far exceeded the average annual global growth

[1] Jeff Fick, *Update: Brazil's Economic Growth Slows to a Crawl in 3Q*, WALL ST. J. (Dec. 6, 2011), http://online.wsj.com/article/BT-CO-20111206-704224.html.

rate of 4.3% for that year.[2] Despite the knock-on effects of the European sovereign debt crisis and the government's concerted effort to slow economic growth to curb inflation,[3] analysts predict an annual growth rate for Brazil of 3.3% in 2012.[4] In 2011, Brazil overtook the U.K. as the sixth-largest economy in the world.[5]

This Article examines Brazil's evolution into an emerging economy, or given the market-based nature of the term, an emerging market economy (EME)—we will use the terms interchangeably. We begin in Part II by outlining the broadly accepted definition of an EME. The term generally refers to dynamic economies that have attracted considerable investor interest, and are gaining economic and political clout on the global stage. EME's are nevertheless "emerging" to the extent that their economies continue to be impeded by a number of factors ranging from policy failures to inequality.

Part III examines Brazil's path towards becoming an EME—the "pre-emergent" Brazil. We cover four periods in this pre-emergent era. The first is the post-independence economic stagnation in the nineteenth century. The second is the period of high economic growth that commenced in the early twentieth century. This period, which came to an end with the debt crisis of the early 1980s, included the adoption of import substitution policies and the onset of the "Brazilian Miracle" from 1968 to 1973. The third period addresses Brazil's debt crisis of the 1980s and its experience during the "lost decade." During this period, President Sarney introduced the ultimately unsuccessful "Cruzado Plan," which introduced a new currency (the *cruzado*) and froze prices and exchange rates after de-indexing the economy. The fourth period included significant economic reforms under Fernando Collor de Mello and the implementation of the "*Real* Plan" designed by Finance Minister and future President Fernando Henrique Cardoso, which, among other things, introduced a new currency (the *real*), tightened monetary policy, introduced a managed-float exchange rate system, cut spending, and increased taxes.

Part IV explains why, thanks to the reforms of Presidents Cardoso and

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[2] *GDP Growth (Annual %)*, WORLD BANK, http://data.worldbank.org/indicator/NY.GDP.MKTP.KD.ZG/countries/BR-XJ?display=graph (last visited Oct. 26, 2012).

[3] Press Release, Council For The Americas, 8th Annual Latin American Predictors Forum: Economic, Financial and Trade Predictions for 2012 (Dec. 2, 2011).

[4] Raymond Colitt, *Brazil's GDP Growth of 2.7% Last Year Underperformed BRIC Peers: Economy*, BLOOMBERG (Mar. 6, 2012), http://www.bloomberg.com/news/2012-03-06/brazil-s-gdp-growth-of-2-7-last-year-underperformed-bric-peers-economy.html.

[5] Sara Miller Llana, *Brazil Bumps Britain to Become World's Sixth Largest Economy*, CHRISTIAN SCIENCE MONITOR (Dec. 27, 2011), http://www.csmonitor.com/World/Americas/Latin-America-Monitor/2011/1227/Brazil-bumps-Britain-to-become-world-s-sixth-largest-economy.

Luiz Inácio "Lula" da Silva, Brazil is now considered an EME. Lula followed Cardoso's orthodox economic policy that reduced interest rates and fostered greater ties with other developing countries to help decrease Brazil's dependence on the Global North for its exports. Brazil has also benefited from policies favoring improved infrastructure, international trade, increased foreign direct investment, and improved government institutions. Importantly, Lula increased Brazil's influence internationally, as evidenced by reforms at the International Monetary Fund and G-20.

Part V addresses Brazil's remaining challenges, including excessive spending, continued over-dependence on commodity exports, corruption, problematic regulatory and legal frameworks, an inefficient judiciary, and inequality.

Part VI concludes this Article. The post-crisis global state of affairs has provided emerging economies, especially the so-called "BRICS"—Brazil, Russia, India, China, and South Africa—with a platform to articulate the framework for a New International Economic Order (NIEO).[6] The question is whether Brazil should help resurrect the NIEO of the 1970s. We conclude that it should not. Instead, Brazil should rely on its rich history to promote an ethically-based NIEO.

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[6] *See* Towards a New International Economic Order, U.N. GAOR, 64th Sess., 2nd comm. mtg., U.N. Doc. A/C.2/64/L.16 (Nov. 2, 2009); *see also* RUMU SARKAR, INTERNATIONAL DEVELOPMENT LAW: RULE OF LAW, HUMAN RIGHTS & GLOBAL FINANCE 9 (2009) ("[T]rade relations and capital investments are being 'rationalized' in a new international economic order that does not conform to the outlines of the postcolonialist relations of the past."); Ruth Gordon, *The Dawn of a New, New International Economic Order?*, 72 L. & CONTEMP. PROBS. 131 (2009); Tiffany Limsico, *Global Governance on the Making: Prospects for a New World Order in Tackling Economic Injustice*, 16 TRANSITION STUD. REV. 520 (2009); Beatriz Bissio, *Emerging Powers Cooking up New International Order*, GLOBAL GEOPOLITICS & POL. ECON. (Apr. 16, 2010), http://globalgeopolitics.net/wordpress/2010/04/16/emerging-powers-cooking-up-new-international-order/; Carlos Garramòn, *Pittsburg: "The World is Heading Toward a New International Economic Order"*, OPINIONSUR (Oct. 2009), http://opinionsur.org.ar/Pittsburg-The-World-is-Heading; Andrew E. Kramer, *Four Nations Seek More Diversity in Global Economic Order*, N. Y. TIMES, June 19, 2009, at 10, *available at* http://query.nytimes.com/gst/fullpage.html?res=9C00EED91131F934A25755C0A96F9C8B63; Kevin Muehring, *New World Order the Balance of Power at the IMF Is Shifting to Developing Countries*, 43 INSTITUTIONAL INVESTOR 7 (2009); Phil Ruthven, *A New World Order*, 31 BUS. REV. WKLY. 19 (2009); Robert J. Samuelson, *A New Economic Order*, NEWSWEEK, May 10, 2010, at 24, *available at* http://www.thedailybeast.com/newsweek/2010/04/30/a-new-economic-order.html; Mansoor Dailami & Paul R. Masson, *The New Multi-Polar International Monetary System* (World Bank, Policy Research Working Paper No. 5147, 2009); Jagadeesh Gokhale, *Toward a New Economic Order*, CATO INST. (Aug. 10, 2010), http://www.cato.org/pub_display.php?pub_id=12074.

II. WHAT IS AN "EMERGING MARKET ECONOMY"?

Antoine van Agtmael of the World Bank's International Finance Corporation (IFC) coined the term "emerging market" in 1981.[7] At the time, he was attempting to start a "Third World Equity Fund," but he had to come up with a more dynamic name to attract investors.[8] Emerging markets were characterized by growing economies and increased wealth with low-to-middle per capita income.[9] The basic notion was that emerging economies, such as the East Asian Tigers of the 1980s (South Korea, Singapore, Hong Kong, and Taiwan), were "emerging" because they were becoming significant players in the modern global economy.[10]

The IFC's origination of the term indicates that it was investor driven. Thus, in 1992 the IFC's Farida Khambata coined the term "frontier markets" for economies that had not reached the status of emerging markets (because of, say, small market capitalization[11]), but nevertheless presented promising investment opportunities.[12] Moreover, in 2001, Goldman Sachs singled out Brazil, Russia, India, and China—the "BRICs"—as countries that, because of their increased global clout, should be considered for inclusion in the G-7.[13] Today, the keen interest in investing in emerging

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[7] *Ins and Outs: Acronyms BRIC Out All Over*, ECONOMIST, Sept. 20, 2008, *available at* http://www.economist.com/node/12080703?story_id=12080703.

[8] *Id.* ("Racking my brain, at last I came up with a term that sounded more positive and invigorating: emerging markets. 'Third World' suggested stagnation; 'emerging markets' suggested progress, uplift, and dynamism.").

[9] Christopher B. Barry et al., *Performance Characteristics of Emerging Capital Markets*, 54 FIN. ANALYSTS J. 72, 72 (1998).

[10] The literature regarding the East Asian Tigers is vast. *See, e.g.*, ASIAN DEVELOPMENT BANK, EMERGING ASIA: CHANGES AND CHALLENGES (1997); COLM FOY ET AL., THE FUTURE OF ASIA IN THE WORLD ECONOMY (1998); INDERMIT GILL & HOMI KHARAS, AN EAST ASIAN RENAISSANCE: IDEAS FOR ECONOMIC GROWTH (2007), *available at* http://siteresources.worldbank.org/INTEASTASIAPACIFIC/Resources/226262-1158536715202/EA_Renaissance_full.pdf; RAMKISHEN S. RAJAN, EMERGING ASIA: ESSAYS ON CRISES, CAPITAL FLOWS, FDI, AND EXCHANGE RATES (2011); Paul Krugman, *The Myth of Asia's Miracle*, 73 FOREIGN AFF. 62 (1994); Steven Radelet & Jeffrey Sachs, *Asia's Reemergence*, 76 FOREIGN AFF. 43 (1997); Pietro Cova et al., *Global Imbalances: The Role of Emerging Asia* (Int'l Monetary Fund, Working Paper No. 09/64, 2009).

[11] Wei Li & Richard Hoyer-Ellefsen, *Characteristics of Emerging Markets* 3 (Investing in Emerging Markets Technical Note Series, Working Paper No. 1, 2008), *available at* http://ssrn.com/abstract=909890 ("In fact, market depth is the main distinction between emerging and frontier market countries.").

[12] Ben R. Marshall et al., *Frontier Market Diversification and Transaction Costs* (October 11, 2011) (unpublished manuscript), *available at* http://ssrn.com/abstract=1942592. Frontier markets include Argentina, Kuwait, Romania, Sri Lanka, Qatar, Ukraine, and Vietnam. *Id.* at 7.

[13] Jim O'Neill, *Global Economic Paper No.66: Building Better Global Economic BRICs*, GOLDMAN SACHS ECON. RES., Nov. 30, 2001, at 3. The G-7 is a forum for international economic discussions. Its members are Canada, France, Germany, Italy, Japan, the United Kingdom, and the United States. The G-7 is now often referred to as the G-8, with Russia

markets is embodied in Morgan Stanley Capital Market International's emerging market indices, such as the MSCI Emerging Market Index, which are followed by nearly ninety percent of emerging market managers.[14] Currently, the MSCI Emerging Market Index consists of twenty-one emerging country indices: Brazil, Chile, China, Colombia, Czech Republic, Egypt, Hungary, India, Indonesia, Korea, Malaysia, Mexico, Morocco, Peru, Philippines, Poland, Russia, South Africa, Taiwan, Thailand, and Turkey.[15]

Although "emerging economy" lacks a precise definition, common themes have emerged since the term's inception. Emerging market economies, as illustrated by those listed above, are characterized by significant and rapid economic growth evidenced by rising gross domestic product (GDP) in an aggregate and per capita basis, increased trade volumes, as well as increased foreign reserves.[16]

Emerging economies are also hosts to increased foreign investment.[17] Foreign investment fuels rapid economic growth, as investors seek out higher profit margins.[18] Countries can attract investors by pursuing market-

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being the eighth member. *What is the G8?*, G8 INFORMATION CENTRE, http://www.g8.utoronto.ca/what_is_g8.html (last updated Feb. 6, 2012).

[14] *The Long View: How Adventurous are Emerging Markets?*, FIN. TIMES (Oct. 20, 2006, 6:48 PM), http://www.ft.com/cms/s/0/be77e600-605f-11db-a716-0000779e2340.html#axzz1fsi1MoZP.

[15] *Index Definitions*, MCSI (May 30, 2011) http://www.msci.com/products/indices/tools/index.html#EM.

[16] M. AYHAN KOSE & ESWAR S. PRASAD, EMERGING MARKETS: RESILIENCE AND GROWTH AMID GLOBAL TURMOIL 2 (2010); *see also* Richard Harmsen & Nagwa Riad, *Trading Places*, 48 FIN. & DEV. 44, 45 (2011) (observing a marked increase in both trade volumes and interconnectedness in emerging markets); Robert E. Hoskisson et al., *Strategy in Emerging Economies*, 43 ACAD. MGMT. J. 249, 249 (2000) (noting that EMEs are characterized by rapid economic development); Dani Rodrik, *The Social Cost of Foreign Exchange Reserves*, 20 INT'L ECON. J. 3, 4 (2006) (noting that the accumulation of foreign exchange reserves is a response to the series of financial crises that struck emerging markets in the 1990s, after which some observers suggested larger foreign exchange reserves would have allowed the suffering countries to prevent contagion more effectively); Luis Orgaz et al., *The Growing Weight of the Emerging Economies in the World Economy and Governance: The Case of the BRICs* 2 (Banco de Espana, Occasional Paper No. 1101, 2011), *available at* http://ssrn.com/abstract=1797583.

[17] LINCOLN GORDON, BRAZIL'S SECOND CHANCE: EN ROUTE TOWARD THE FIRST WORLD 15–16 (2001); *see also* Orgaz et al., *supra* note 16, at 24–25.

[18] KOSE & PRASAD, *supra* note 16, at 53; *see also* DALE R. WEIGEL ET AL., FOREIGN DIRECT INVESTMENT 13–15 (1997). Foreign investment is helpful in several ways. Foreign investors bring large sums of foreign exchange (which helps ease balance-of-payment concerns in the host market), technology, administrative expertise, and training capacity—all of which help make an economy more efficient. *See* WERNER BAER, THE BRAZILIAN ECONOMY: GROWTH AND DEVELOPMENT 240–41 (5th ed. 2001). Increased FDI has also been associated with export diversification, wage increases, and rising employment. Andrea Amaro & William Miles, *Racing to the Bottom for FDI?: The Changing Role of Labor Costs*

based reforms ranging from orthodox macroeconomic policies to being open to international trade—hence, one encounters the interchangeable term "emerging market economies" (EMEs).[19] Orthodox macroeconomic policies include, among other things, privatization of state-owned businesses,[20] liberalization of domestic banking systems and stock markets to allow foreigners easier access,[21] and decreased debt.[22] As for trade, EMEs are generally more open to international trade than other economies, including advanced economies.[23] While this openness is spurred initially by export-led growth models, it functions to diversify the goods countries export.[24] Diversification and general integration into the international economy help reduce the effects of sudden changes in global prices or other internal or external economic shocks, making the country more stable for investors.[25]

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and Infrastructure, 40 J. DEVELOPING AREAS 1, 1 (2006), *available at* http://www.jstor.org/stable/4193013.

19 KOSE & PRASAD, *supra* note 16, at 53; *see also* Wiegel, *supra* note 18, at 10; Giuseppina Maria Chiara Talamo, *FDI, Mode of Entry and Corporate Governance*, *in* GEOGRAPHY, STRUCTURAL CHANGE AND ECONOMIC DEVELOPMENT: THEORY AND EMPIRICS 29, 60–61 (2009), *available at* http://growthbook4.ec.unipi.it/Chapter2.pdf.

20 KOSE & PRASAD, *supra* note 16, at 53; *see also* Mary M. Shirley, *Privatization and Performance*, 17 HASTINGS INT'L & COMP. L. REV. 669, 670 (1993) ("Privatization is viewed as one way to break the direct link between the enterprise and the government and, in the process, to improve performance, raise capital, and reduce the government's exposure to commercial risk.").

21 KOSE & PRASAD, *supra* note 16, at 53; *see also* Geert Bekaert et al., *Does Financial Liberalization Spur Growth?*, 77 J. FIN. ECON. 3, 3 (2001) (arguing that equity market liberalization leads to a one percent increase in real economic growth over a five-year period on average); Harjoat Singh Bhamra, Stock Market Liberalization and the Cost of Capital in Emerging Markets 1 (Mar. 19, 2009) (unpublished manuscript), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1365041.

22 KOSE & PRASAD, *supra* note 16, at 57; *see also* Martin Feldstein, *A Self-Help Guide for Emerging Markets*, 78 FOREIGN AFF. 93, 102 (1999).

23 KOSE & PRASAD, *supra* note 16, at 57; *see also* Orgaz et al., *supra* note 16, at 22.

24 KOSE & PRASAD, *supra* note 16, at 41; *see also* Rudiger Dornbusch, *The Case for Trade Liberalization in Developing Countries*, 6 J. ECON. PERSP. 69, 71–72 (1992) (explaining how the negative effects of protectionism on export industries often leads to liberalization); Allen Dennis & Ben Shepherd, *Trade Costs, Barriers to Entry, and Export Diversification in Developing Countries* 1 (World Bank, Policy Research Working Paper No. 4368, 2007) (arguing that for every 1% reduction in trade costs, there is a subsequent 0.3–0.4% increase in export diversification).

25 KOSE & PRASAD, *supra* note 16, at 71; *see also* John E. Wagner & Steven C. Deller, *Measuring the Effects of Economic Diversity on Growth and Stability*, 74 LAND ECON. 541, 542 (1998) (arguing that diversification is necessary for long-term economic stability, though specialization is necessary to spur short-term growth); Jeffrey D. Sachs & Andrew Warner, *Economic Reform and the Process of Global Integration*, BROOKINGS PAPER ON ECON. ACTIVITY, no. 1, 1995, at 55–56, *available at* http://www.brookings.edu/~/media/Files/Programs/ES/BPEA/1995_1_bpea_papers/1995a_bpea_sachs_warner_aslund_fischer.pdf.

Economic factors are not the sole criteria used to designate EMEs. Significant economic growth can translate into increased political influence on a regional and international scale.[26] The level of international political clout varies from country to country, but EMEs generally are gaining power and influence internationally, especially compared to other developing countries.[27] They are leaders in their respective regions, and are frequently responsible for representing the interests of that entire region in global economic affairs.[28]

The term EME suggests that a country so labeled has made significant strides towards joining the ranks of "developed countries." However, "emerging" also suggests that an EME's development is somehow hindered. The typical factors that highlight this characteristic relate to policy failures, weak institutional structures, underdeveloped and poorly regulated financial sectors, and inequality. Policy failures, including ineffective monetary and exchange rate policies[29] and public investment regimes (e.g., poorly allocated investments in infrastructure,[30] education,[31]

[26] Jim O'Neill et al., *Global Economic Paper No.134: How Solid are the BRICs?*, GOLDMAN SACHS ECON. RES., Dec. 1, 2005, at 3; *see also* Orgaz et al., *supra* note 16, at 32.

[27] Quentin Peel, *Risks Rise in Shift to a Multipolar World*, FIN. TIMES, Jan. 27, 2009, at 8.

[28] *See, e.g.,* Juan de Onis, *Brazil's New Capitalism*, 79 FOREIGN AFF. 107, 109 (2000) (discussing Brazil as a political and economic leader in Latin America).

[29] Paul Krugman, *Dutch Tulips and Emerging Economies*, 74 FOREIGN AFF. 28, 30 (1995) (noting that unsustainable exchange rates are behind the speculative attacks, which EMEs have been famous for facing in the last two decades); Charalambos Tsangarides, *Crisis and Recovery: Role of Exchange Rate Regime in Emerging Market Economies* 3 (Int'l Monetary Fund, Working Paper No. 10/242, 2010) (showing that countries with floating exchange rate regimes have recovered from the global financial crisis faster than countries with crawling peg regimes); *see also* Federico Ravenna & Fabio M. Natalucci, *Monetary Policy Choices in Emerging Market Economies: The Case of High Productivity Growth*, 40 J. MONEY, CREDIT & BANKING 243 (2008); *but see* Harun Alp et al., *An Assessment of Malaysian Monetary Policy During the Global Financial Crisis of 2008-09* (Int'l Monetary Fund, Working Paper No.12/35, 2012) (arguing that Malaysian Central Bank effectively maneuvered its monetary policy to combat the negative effects of the global financial crisis).

[30] Klaus E. Meyer, *Perspectives on Multinational Enterprises in Emerging Economies*, 35 J. INT'L BUS. STUD. 259, 260 (2004) ("[EMEs] typically have less sophisticated market supporting institutions and fewer locational advantages based on created assets, such as infrastructure and human capital.") (citations omitted). Infrastructure is especially important for countries seeking to attract FDI while improving the domestic standard of living by raising wages. Amaro & Miles, *supra* note 18, at 3 ("[B]etter infrastructure can increase the productivity of labor. Thus, even if wages rise, higher productivity based on solid, dependable infrastructure can lead to lower unit labor costs, and allow for higher incomes without causing a loss of investment."). Mexico is an example of an EME with rising wages that has been held back by poor infrastructure. *Id.*

[31] Eric A. Hanushek & Ludger Wobmann, *The Role of Education Quality in Economic Growth* 51–58 (World Bank, Policy Research Working Paper No. 4122, 2007), *available at* http://ssrn.com/abstract=960379. The literature is split as to the extent to which education

and health[32]), and weak institutional structures (regulatory,[33] judicial,[34] and

(or human capital) is necessary for economic growth. Daniel Cohen & Marcelo Soto, *Growth and Human Capital: Good Data, Good Results*, 12 J. ECON. GROWTH 51, 51–52 (2007). The first wave of research on the topic, referred to as "New Growth Theory," found a strong positive correlation between educational attainment and economic growth. *See, e.g.*, Robert E. Lucas Jr., *On the Mechanics of Economic Development*, 22 J. MONETARY ECON. 3 (1988); Paul Romer, *Endogenous Technological Change*, 98 J. POL. ECON. S71 (1990). Several authors later challenged this view, saying that previous research had overstated the value of education to economic growth, but not negating its value entirely. *See, e.g.*, Jess Benhabib & Mark M. Speigel, *The Role of Human Capital in Economic Development: Evidence from Aggregate Cross-Country Data*, 34 J. MONETARY ECON. 143 (1994); Lant Pritchett, *Where Has All the Education Gone?*, 15 WORLD BANK ECON. REV. 367 (2001); Mark Bils & Peter J. Klenow, *Does Schooling Cause Growth?*, 90 AM. ECON. REV. 1160 (2000). Cohen and Soto argue that the differences between the authors arise due to differences in the measurement and definition of "human capital"—a phrase which easily eludes precise definition. Cohen & Soto, *supra* note 31, at 52. Hanushek and Wobmann argue that studies showing only a small connection between education and economic growth focus on years of education instead of cognitive abilities of the workforce. Hanushek &Wobmann, *supra* note 31, at 1–4. They note that there is a very strong correlation between cognitive ability of the workforce and economic growth. *Id.*

[32] Halima A. Qureshi & Hasina A. Mohyuddin, *Health Status, Diseases, and Economic Development: A Cross-Country Analysis*, 39 J. DEVELOPING AREAS 121, 122 (2006) (observing that developing countries account for ninety percent of the global disease burden); *see also* WORLD BANK, WORLD DEVELOPMENT REPORT 1993: INVESTING IN HEALTH 17 (1993) ("Improved health contributes to economic growth in four ways: it reduces production losses caused by worker illness; it permits the use of natural resources that had been totally or nearly inaccessible because of disease; it increases the enrollment of children in school and makes them better able to learn; and it frees for alternative uses resources that would otherwise have to be spent on treating illness."); David Wheeler, *Basic Needs Fulfillment and Economic Growth: A Simultaneous Model*, 7 J. DEV. ECON. 435 (1980) (showing that improved health conditions increase labor productivity and GDP growth).

[33] Eswar S. Prasad, *Financial Sector Regulation and Reform in Emerging Markets: An Overview*, *in* FINANCIAL MARKET REGULATION AND REFORMS IN EMERGING MARKETS 3, 11 (Masahiro Kawai & Edward S. Prasad eds., 2011) ("A basic priority in emerging markets is to strengthen the institutional framework in order to promote financial stability."). Regulations of intellectual property rights, taxation, capital markets, and competition are often cited as examples of potential growth inhibitors for developing countries. *See, e.g.*, David M. Gould & William C. Gruben, *The Role of Intellectual Property Rights in Economic Growth*, 48 J. DEV. ECON. 323 (1996) (showing a correlation between strong intellectual property protection and economic growth, especially in open market economies); Alireza Naghavi, *Strategic Intellectual Property Rights Policy and North-South Technology Transfer*, 143 REV. WORLD ECON. 55 (2007) (arguing that strong protection of intellectual property rights is in developing countries' best interests because such protection encourages FDI and technology transfer); Joseph E. Stiglitz, *Capital Market Liberalization, Economic Growth, and Instability*, 28 WORLD DEV. 1075 (2000) (arguing, in the aftermath of the Asian Financial Crisis, that total capital market liberalization has a destabilizing effect on countries, but that capital market liberalization, with proper controls on short-term capital flows, will spur economic growth without the destabilizing side effects of total liberalization); Jean-Jacques Laffont, *Competition, Information, and Development*, *in* ANNUAL WORLD BANK CONFERENCE ON DEVELOPMENT ECONOMICS 1998, at 237–57 (Boris Pleskovic & Joseph Stiglitz eds., 1998); Vito Tanzi & Howell H. Zee, *Tax Policy for*

political[35]) raise transaction costs for foreign and domestic investors, which makes doing business in that country more difficult and scares away potential investors.[36] The presence of underdeveloped financial sectors and high inequality hinders the effective allocation of capital, which impedes overall economic efficiency.[37] Thus, defining an economy as "emerging"

Emerging Markets: Developing Countries (Int'l Monetary Fund, Working Paper No. 00/35, 2000) (discussing the myriad flaws in the taxation systems that affect economic growth in developing countries); *but see* Ajit Singh, *Competition and Competition Policy in Emerging Markets: International and Developmental Dimensions* 7 (G-24 Discussion Paper Series, Paper No. 18, 2002) ("[M]any developing countries have been able to maintain considerable competition in product markets despite the absence of a formal competition policy."); Prasad, *supra* note 33, at 3 (noting that the global financial crisis exposed both weaknesses in the regulatory structures of advanced economies and strengths of certain regulatory systems in emerging markets).

[34] Richard E. Messick, *Judicial Reform and Economic Development: A Survey of the Issues*, 14 WORLD BANK RES. OBSERVER 117, 120–23 (1999) (surveying the various theories regarding the importance of strong judiciaries to enforce contract and property rights, restrain government actors, and otherwise protect foreign investors); *see also* William Ratliff & Edgardo Buscaglia, *Judicial Reform: The Neglected Priority in Latin America*, 550 ANNALS AM. ACAD, 59 (1997); Vai-Lam Mui, *Contracting in the Shadow of a Corrupt Court*, 155 J. INSTITUTIONAL & THEORETICAL ECON. 249 (1999).

[35] Juan Martinez & Javier Santiso, *Financial Markets and Politics: The Confidence Game in Latin American Emerging Economies*, 24 INT'L POL. SCI. REV. 363, 364 (2003) (noting the connection between perceived political instability and real instability in financial markets in emerging markets). More corruption is an indirect negative consequence of weak political institutions. *See* Daniel Lederman et al., *Accountability and Corruption: Political Institutions Matter* (World Bank, Policy Research Working Paper No. 2708, 2001) ("[P]olitical institutions affect corruption through two channels: political accountability and the structure of provision of public goods."); Paolo Mauro, *Corruption and Growth*, 110 Q. J. ECON. 681 (1995) (showing that corruption lowers economic growth by lowering investment); Beata S. Javorcik & Shang-Jin Wei, *Corruption and Cross-Border Investment in Emerging Markets: Firm-Level Evidence* (Hong Kong Institute for Monetary Research, Working Paper No. 062009, 2009) (showing that corruption lowers FDI and pushes the remaining FDI towards joint ventures, which technologically advanced firms disfavor).

[36] Krishna G. Palepu & Tarun Khanna, *Institutional Voids and Policy Challenges in Emerging Markets*, 5 BROWN J. WORLD AFF. 71, 71 (1998); *see also* Garry D. Bruton et al., *Institutional Differences and the Development of Entrepreneurial Ventures: A Comparison of the Venture Capital Industries in Latin America and Asia*, 40 J. INT'L BUS. STUD. 762, 771 (2009) (finding that the different institutional reforms undertaken in Latin America and Asia have led to differing levels of entrepreneurship).

[37] Edda Zoli, *Financial Development in Emerging Europe: The Unfinished Agenda* 3 (Int'l Monetary Fund, Working Paper No. 07/245, 2007) ("Financial development is often associated with improved economic performance, as deep, liquid, diversified, and stable financial markets allow efficient intermediation of funds, facilitate risk diversification, and tend to favor growth in the long run. Moreover, strong local markets can offer a stable source of financing for private and public sectors, helping them cope with possibly volatile external capital flows."); Jin Zhang et al., *Financial Development and Economic Growth: Recent Evidence from China*, 40 J. COMP. ECON. 393, 393–400 (2012) (reviewing literature on the subject of financial development and growth tending to show a positive correlation between the two); José Luís Oreiro, *Capital Mobility, Real Exchange Rate Appreciation, and*

goes beyond merely quantifying economic growth. On the one hand, the label suggests that an EME is likely to enjoy a bright economic future and a more powerful voice in world economic fora. On the other hand, the label also recognizes long histories of economic failures and areas of uncertainty that could impede the EME's positive trajectory. Brazil epitomizes this uncertainty. Its long history of economic underperformance, recent dramatic reforms, and unrealized potential make it an intriguing example of a truly emerging market.

III. THE PRE-EMERGENT BRAZIL

The "pre-emergent" Brazil is marked by four periods of economic underperformance. The first period covers Brazil's post-independence economic stagnation in the nineteenth century. The second was a period of high economic growth that commenced in the early twentieth century and came to an end with the debt crisis of the early 1980s. The third was a period of economic struggle during Latin America's "lost decade." The fourth period included significant economic reforms that set the stage for Brazil's elevation to an EME.

A. Post-Independence Brazil

Unlike its Spanish-American peers, Brazil did not gain its independence from Portugal through an armed revolution, but rather by becoming a separate empire headed by a member of the Portuguese royal family.[38] Though this process prevented Brazil from fracturing into smaller

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Asset Price Bubbles in Emerging Economies: A Post Keynesian Macroeconomic Model for a Small Open Economy, 28 J. POST KEYNESIAN ECON. 317, 319 (2005) ("[F]inancial markets in emerging countries . . . have a low degree of organization, which produces a great volatility in asset prices when compared to the fluctuations in asset prices observed in the financial markets of developed countries."); Peter J. Morgan & Mario B. Lamberte, *Strengthening Financial Infrastructure* (Asian Dev. Bank Inst., Working Paper No. 345, 2012), *available at* http://ssrn.com/abstract=2006983. Emerging market financial systems have, however, been generally less affected by the global financial crisis than those in advanced economies. Prasad, *supra* note 33, at 4. Inequality among a country's population hinders overall economic potential by encouraging inefficient allocation of credit. Lending institutions view the very poor as credit risks, and thus do not lend to them except by charging higher interest rates or requiring collateral as security for loans. These requirements work to prevent many of a nation's poor from gaining access to credit or force them to use that credit more restrictively to ensure their ability to repay, both of which prevent the credit from being used as productively as it would be otherwise. If a whole segment of the population is not fully participating in the economy, the economy does not function at maximum capacity or efficiency. FRANCISCO H.G. FERREIRA ET AL., INEQUALITY AND ECONOMIC DEVELOPMENT IN BRAZIL xvii (2004).

[38] RIORDAN ROETT, THE NEW BRAZIL 15 (2010). The Portuguese royal family fled to Brazil in 1807 after Napoleon invaded the Iberian Peninsula. Dom Pedro I decided to stay in Brazil and rule it as a separate empire after the rest of the family returned to Portugal. The arrival of the monarchy is when Brazil first opened to international trade with Portugal's

states as the former Spanish colonies did, it also prevented any real societal or economic change from occurring.[39] The country and its economy continued to be dominated by the land-owning class propelled by the free labor of African slaves that had dominated during the colonial period.[40] In 1822, just prior to the establishment of the new empire, Brazil had the lowest GDP per capita of any New World colony and depended largely on sugar and cotton exports.[41] By the time the empire ended at the end of the nineteenth century, coffee had supplanted sugar and cotton as the country's principal export, industrialization was still far off, and the new government was responsible for a sizeable debt left to it by the empire.[42]

The monarchy outlawed slavery in 1888, and the country peacefully transitioned to a republic the following year.[43] The "First Republic" (1889–1930) was a decentralized government in which the states had expansive powers.[44] The central government did, however, play a key role in supporting the coffee boom in São Paulo that drove the national economy.[45] The First Republic also saw the rise of "*Ordem e Progresso*" (Order and Progress) as a national mantra that sought "modernization," mostly through militarization.[46] It was the newly strengthened military, not surprisingly, that brought about the end of the First Republic.[47] When the political climate stagnated during the first quarter of the twentieth century, it was young military officers who first challenged the old politics of the ruling

allies, especially Britain. *Id.* at 24–25.

[39] *Id.* at 19.

[40] *Id.* at 21–22.

[41] John H. Coatsworth, *Why is Brazil "Underdeveloped" and What Can Be Done About It?*, 6 HARV. REV. LATIN AM. 7, 7 (2007); ROETT, *supra* note 38, at 29.

[42] ROETT, *supra* note 38, at 28, 32. Coffee's ascension was largely aided by British capital and engineers who built the railroads to connect the coffee producing regions to the port at Santos. *Id.* at 28.

[43] *Id.* at 15. The desire to be an influential nation drove much of the debate regarding slavery prior to its abolishment. Abolitionists feared that Brazil could not become a powerful, modern nation if it was the last country to abolish slavery, while the pro-slavery politicians argued that Brazil could not become a global power unless it was perceived as a white nation. The country eventually settled on a compromise: slavery was abolished and European immigrants were recruited to serve as cheap labor and reinforce the white population. *Id.* at 28–29.

[44] *Id.* at 15. Decentralization came about due to the growing influence of the Sao Paolo state (the home of the coffee boom) that felt oppressed by the Rio de Janeiro based central government. *Id.* at 29. The states' powers at this time included taxation of exports and the creation of separate militaries. *Id.* at 32.

[45] *Id.* at 15. Though coffee drove the economy, Roett argues that coffee's success restricted growth in other sectors as it attracted such a large percentage of total investment. *Id.* at 35.

[46] *Id.* at 30. "Ordem e Progresso" is still emblazoned on the Brazilian flag today.

[47] ROETT, *supra* note 38, at 36.

elite in both the military and civilian world.[48] The movement started by those young officers came to a head in 1930 when a democratically-elected president was forced out of office in favor of the man who had been runner up in the election—former finance minister Getúlio Vargas.[49]

B. Early Twentieth Century to the Debt Crisis of the 1980s

Though the Brazilian economy experienced its first stretch of sustained growth in the last years of the First Republic, it was under Getúlio Vargas that the Brazilian economy began to modernize.[50] Under Vargas, the focus of Brazil's economic policies was achieving self-sufficiency and economic independence through state-led development initiatives.[51] To support his efforts and dilute the influence of the agricultural oligarchs, Vargas immediately sought the support of urban labor, the burgeoning middle class, and the Roman Catholic Church.[52] Though in the broadest sense his outreach to these groups was political, his specific policies would help foster economic development in the future.[53] Indeed, Brazil averaged four percent growth annually throughout the 1930s while most of the developed world was mired in the Great Depression.[54] In 1937, Vargas consolidated his reforms after a self-coup of sorts allowed him to retain executive power despite a constitutional limit to one term as president.[55] Vargas branded the new political reality the "*Estado Novo*" ("New State").[56]

After announcing the "New State," Vargas strengthened his drive for industrialization by focusing state investment in the steel and oil sectors—

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[48] *Id.* at 35–36.

[49] *Id.* Getúlio Vargas was the first Brazilian leader that was not part of the "agrarian aristocracy" that had ruled Brazil during the entire First Republic. He ruled Brazil for eighteen years in various capacities that Roett labels "provisional president" (1930–1934), "indirectly elected chief executive" (1934–1937), "soft dictator" (1937–1945), and directly elected president (1951–1954). *Id.* at 37.

[50] *See* Coatsworth, *supra* note 41, at 7 (noting that from 1913 to 1980, Brazil grew faster than any other country in the Western Hemisphere).

[51] Leonardo Martinez-Diaz & Lael Brainard, *Brazil: The "B" Belongs in the BRICs*, *in* BRAZIL AS AN ECONOMIC SUPERPOWER? 5 (Leonardo Martinez-Diaz & Lael Brainard eds., 2009).

[52] ROETT, *supra* note 38, at 38–39.

[53] *Id.* at 38. For example, education was a large focus of Vargas' outreach to the middle class whose loyalty he hoped to win. He opened the first Brazilian university in São Paulo in 1934 mainly in the hopes of educating the next generation of public administrators, but also to ensure professional opportunities existed for the middle class to prevent members from falling to a lower class. *Id.* at 38–39.

[54] GORDON, *supra* note 17, at 14.

[55] ROETT, *supra* note 38, at 38. Vargas himself had approved the 1934 constitution that limited him to one term that would have ended in 1938. *Id.* at 39.

[56] *Id.* at 41.

the first vestiges of import substitution in heavy industry.[57] Despite these efforts, Brazil's economy was still largely dependent on coffee, and industrialization was slow.[58] Like with his predecessor, the military peacefully pushed Vargas out of power in 1945 due to his overzealous attempts to further consolidate power.[59] Despite the political backlash, the new government did little to change Brazil's economic course.[60] Though Brazil's GDP grew at an average of six percent per year between 1947 and 1962, the government often employed unorthodox economic policies.[61] The country struggled with balance-of-payment issues for several years leading the government to impose exchange rate controls from 1947 to 1953 to help depress an over-valued currency, and to introduce import licensing requirements to stem the flow of imports.[62] Though it was Vargas who first pushed for import substitution, especially during his final term as president in the early 1950s, it was his successor, Juscelino Kubitschek (1956–1961), who made import substitution the cornerstone of an economic policy he claimed would produce fifty years of development during his five-year term.[63]

Despite credit often going to either Vargas or Kubitschek, the Banco

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[57] *Id.*; GORDON, *supra* note 17, at 41. Policies that fit the import substitution mold date to the nineteenth century, but early import substitution was focused on simpler consumer goods. ROETT, *supra* note 38, at 41. Brazil's first forays into import substitution also had more to do with achieving balance-of-payments equilibrium than industrialization. Werner Baer & Issac Kerstenetzky, *Import Substitution and Industrialization in Brazil*, 54 AM. ECON. REV. 411, 413–14 (1964). Import Substitution Industrialization (ISI) was an immensely popular policy throughout Latin America from the 1950s to the 1970s. Argentine economist Raul Prebisch developed the policy during his time with the United Nations Economic Commission for Latin America (ECLA, now ECLAC). The literature on import substitution is vast. *See, e.g.*, ANN O. KRUEGER, TRADE POLICIES AND DEVELOPING NATIONS (1995); Albert O. Hirschman, *The Political Economy of Import-Substituting Industrialization in Latin America*, 82 Q. J. ECON. 1 (1968); RAUL PREBISCH, THE ECONOMIC DEVELOPMENT OF LATIN AMERICA AND ITS PRINCIPAL PROBLEMS (1950); Werner Baer, *Import Substitution and Industrialization in Latin America: Experiences and Interpretations*, 7 LATIN AM. RES. REV. 95 (1972); Henry J. Bruton, *A Reconsideration of Import Substitution*, 36 J. ECON. LIT. 903 (1998). Vargas' decision to invest in steel was driven mostly by the high war-time demand and the financial assistance the United States provided in return for Brazil's military assistance to the Allied Forces. In 1938, Vargas nationalized all oil production, sparking years of debate surrounding the government's proper role in the sector. ROETT *supra* note 38, at 41–42.

[58] ROETT, *supra* note 38, at 42. In 1940, Brazil's infrastructure was still sub-par and two-thirds of adults were illiterate—both of which inhibited Brazil's economic development. GORDON, *supra* note 17, at 14.

[59] ROETT, *supra* note 38, at 43.

[60] *Id.* at 44.

[61] Martinez-Diaz & Brainard, *supra* note 51, at 2; ROETT, *supra* note 38, at 45.

[62] ROETT, *supra* note 38, at 45. The over-valued currency was of special concern to the export-driven economy. *Id.*

[63] GORDON, *supra* note 17, at 41; ROETT, *supra* note 38, at 48.

do Brasil was actually the first source of import substitution policies specifically targeted at industrialization.[64] It issued a decree in 1955 that allowed entrepreneurs easy access to foreign capital if the government deemed their proposed investments desirable for Brazil's development.[65] In addition, Brazil changed its "Law of Similars" to make it easier for domestic producers to successfully apply for tariff protection against foreign competition.[66] The government also directly supported various industries.[67] During Kubitschek's term, the government invested heavily in the automotive, shipbuilding, and petrochemical industries as part of his "*Programa de Metas*" ("Goals Program").[68] These import substitution policies helped Brazil develop rapidly.[69] However, while the automotive industry grew to be very successful, other government-targeted industries saw mixed results.[70] Moreover, import substitution gave rise to two lingering problems: inflation and regional inequality.[71]

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[64] Baer & Kerstenetzky, *supra* note 57, at 414. Banco do Brasil is a state-owned commercial bank that acted as a quasi-central bank until the government created an official central bank (Banco Central do Brasil) in 1964. *Histórico*, BANCO CENTRAL DO BRAZIL, http://www.bc.gov.br/?HISTORIABC (last visited Jan. 8, 2013).

[65] Baer & Kerstenetzky, *supra* note 57, at 414.

[66] *Id.* Any manufacturer that produced or intended to produce a good similar to one that was currently imported could apply for tariff protections starting early in the twentieth century. The change in the 1950s made any granted protections much stronger by raising tariffs and exchange rate requirements. *Id.*

[67] *Id.* Much of this government money went through the newly established Brazilian Development Bank (known by its Portuguese acronym, BNDES) and state-run enterprises. *Id.*

[68] GORDON, *supra* note 17, at 42.

[69] From 1947 to 1952, Brazil's economy grew at an average rate of six percent per year. By the end of Kubitschek's presidency, growth had reached nearly eight percent per year. Industrialization continued as Brazil began to produce more consumer durable goods and capital goods. Rural to urban migration also nearly doubled. ROETT, *supra* note 38, at 48; GORDON, *supra* note 17, at 16. There is some debate as to the effects of ISI on export diversity. Gordon argues that ISI did help diversify exports, while Kerstenetzky argues that any export diversification was minimal. GORDON, supra note 17, at 43; Baer & Kerstenetzky *supra* note 57, at 424. Both agree that agriculture was almost completely ignored during the period, which, due to its historical domination of Brazilian exports, essentially guaranteed a certain amount of export diversification. GORDON, *supra* note 17, at 43; Baer & Kerstenetzky, *supra* note 57, at 424.

[70] GORDON, *supra* note 17, at 41–43; Baer & Kerstenetzky, *supra* note 57, at 421. The automotive industry was successful not only because it eventually manufactured cars at globally competitive prices, but also because it spawned an entire network of related economic activity as automobiles that became a popular consumer item for middle-class Brazilians. Service stations, roadside motels, technical schools, and other business sprang up throughout the country supporting both new consumption and new jobs. GORDON, *supra* note 17, at 41–42.

[71] GORDON, *supra* note 17, at 43; BAER, *supra* note 18, at 67–68. Though Brazil eventually conquered high inflation, as discussed *infra* Part III.D, regional inequality is an issue to this day. *See, e.g.*, Carlos Alberto Manso et al., *Retornos da Educação e o*

The structuralist economic theorists who developed the idea of import substitution industrialization believed that inflation was a necessary component of rapid growth.[72] This belief allowed policy makers to continuously maintain a loose monetary policy while building large deficits by spending on large projects and increasing the minimum wage faster than was necessary to keep up with the cost of living.[73] Brazil's excellent growth during the Kubitschek years served as proof of the wisdom of structuralist economics, but only temporarily.[74]

Brazil's short-lived democratic stability came to an end with the election of Jânio Quadros in 1960.[75] Quadros resigned from office in August of 1961 after only eight months following several unsuccessful attempts to expand executive power.[76] The military, however, refused to allow his vice president João Goulart to return from a diplomatic visit to China to assume the presidency due to fears that Goulart held socialist economic views.[77] After several weeks of tension and political maneuvering, the military allowed Goulart to return to Brazil and assume the presidency with reduced executive powers.[78] The conflict sapped the government's legitimacy, weakened institutional stability, and halted the country's economic growth[79]—all of which opened the door for another military takeover in early 1964.[80]

The ensuing military regime's economic policies sought to control inflation (which had become an obvious problem during the first years of the 1960s) by increasing savings via reforming capital markets, attracting foreign capital to finance large-scale industrial production, and investing heavily in infrastructure and state-owned enterprises (parastatals).[81] The military government's first policy actions focused on reducing wasteful

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Desequilíbrio Regional no Brasil, 64 REV. BRASILEIRA DE ECONOMIA 115 (2010).

[72] GORDON, *supra* note 17, at 44–50.

[73] *Id.*

[74] *Id.* Though the wisdom of structuralist economics was at least debatable for the next two decades, structuralism was almost completely discredited as an economic theory following the debt crisis. *See* Luiz Carlos Bresser Pereira, *Development Economics and the World Bank's Identity Crisis*, 2 REV. INT'L POL. ECON. 211 (1995).

[75] ROETT, *supra* note 38, at 50.

[76] *Id.*; *see also* GORDON, *supra* note 17, at 53–54 (discussing the possible political reasons behind Quadros' abrupt resignation).

[77] GORDON, *supra* note 17, at 51.

[78] *Id.*

[79] BAER, *supra* note 18, at 71–72. After peaking at 10.3% growth in 1961, economic growth "fell to 5.3%, 1.5%, and 2.4% in 1962, 1963, and 1964, respectively." *Id.* at 72. Meanwhile, inflation reached 100% in 1964. *Id.*

[80] GORDON, *supra* note 17, at 52–53.

[81] BAER, *supra* note 18, at 73; Anthony Galano III, *International Monetary Fund Response to the Brazilian Debt Crisis: Whether the Effects of Conditionality Have Undermined Brazil's National Sovereignty?*, 6 PACE INT'L L. REV. 323, 325–26 (1994).

spending, increasing tax collection, and removing some price restrictions—all of which were generally successful.[82] The budget deficit steadily fell from 4.3% of GDP in 1963 to 0.3% in 1971, and inflation fell to about 20%.[83] These adjustments set the stage for the so-called "Brazilian Miracle," lasting from 1968 to 1973, when the country's economy grew more than ten percent each year.[84] Changes to capital market regulations increased investment, which the government then directed towards specific industries through tax incentives.[85] These policies helped dramatically diversify the country's exports.[86]

Some observers argue that state control of the economy through the tax code and parastatals contributed more to the Miracle than market forces did.[87] However, the Miracle had a very troublesome side effect: income inequality skyrocketed to one of the highest levels in the world—an issue that persists today.[88]

C. Brazil's Debt Crisis of the 1980s

The military government's drive to industrialize Brazil led the country to spend vast amounts of borrowed money on the infrastructure necessary to support industrial production.[89] This increased borrowing coincided with the return of import substitution policies in the second half of the 1970s aimed at increasing domestic production of steel, copper, aluminum, fertilizers, and capital goods while simultaneously continuing the drive to

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[82] BAER, *supra* note 18, at 73.

[83] *Id.* at 73–74.

[84] Martinez-Diaz & Brainard, *supra* note 51, at 2; BAER, *supra* note 18, at 74. Foreign direct investment also skyrocketed from $84 million per year from 1965–1969 to $1 billion per year from 1973–1976. BAER *supra* note 18, at 77. Note, however, that this period was also the high point for human rights abuses during the military dictatorship. *Id.* at 88.

[85] BAER, *supra* note 18, at 74.

[86] *Id.* at 77. Coffee—traditionally Brazil's staple export—saw its percentage of total export volume fall from 42% in the mid-1960's to 12.6% in 1974, while manufactures rose from around 7% to 27%. *Id.*

[87] *Id.* at 78.

[88] GORDON, *supra* note 17, at 21. Brazil's inequality grabbed global attention in the mid-1970's when World Bank President Robert McNamara singled the country out as an example of an economically-prosperous developing country that was doing little to help the majority of its populace. BAER, *supra* note 18, at 88.

[89] Galano, *supra* note 81, at 325. Though this borrowing is unanimously accepted as the main cause of the 1982 Brazilian debt default, some authors argue that this spending created the current competitive advantage Brazil holds in agribusiness and biofuel production. Martinez-Diaz & Brainard, *supra* note 51, at 6. The parastatals alone would come to account for 46% of Brazil's total foreign debt in 1981. Galano argues that Brazil relied on foreign lending instead of opening its industries to foreign direct investment because the military was fearful of the potential of foreign economic influence that could come with FDI. Galano, *supra* note 81, at 326.

improve infrastructure.[90] When the Organization of Petroleum Exporting Countries (OPEC) raised oil prices in 1973 and 1979, Brazil had to double the amount it spent on imported oil (80% of all oil it consumed)—money it borrowed at floating interest rates from foreign (mostly U.S.) commercial banks flush with petrodollar deposits from OPEC countries.[91] Brazil's government justified relying on debt to finance its growth by claiming that the new export capacity would lead to a trade surplus that would in turn increase the amount of foreign reserves available to a level easily sufficient to repay creditors in the long run.[92]

From 1978 to 1981, the United States compounded Brazil's budget issues by raising interest rates, which increased debt service payments for Brazil and several other Latin American countries.[93] In 1982, Mexico defaulted on its foreign debts, instantly drying up foreign sources of capital for many Latin American countries, including Brazil.[94] With no access to foreign capital, Brazil was unable to pay its debts and continue spending on its industrialization program.[95] In 1983, it had no other choice but to undergo a substantial external debt restructuring and turn to the International Monetary Fund (IMF)[96]—a lender Brazil had long avoided because of the strict conditions put on loans—for the financing it needed.[97]

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[90] BAER, *supra* note 18, at 88–90. These goals were part of the Second National Development Plan. Most of the plan involved expanding the activities of parastatals. Though the increased spending was a direct cause of the debt crisis, the policies were at least successful at keeping growth rates around seven percent per year for the rest of the 1970s. *Id.* at 90.

[91] Galano, *supra* note 81, at 328; BAER, *supra* note 18, at 87. Brazil's import bill for petroleum rose from $6.2 billion in 1973 to $12.6 billion in 1974, and the military government—which changed leaders in 1974—made a conscious decision to spend the additional money to ensure the rapid growth would continue. BAER, *supra* note 18, at 87. Baer also notes that the floating interest rates were initially very low, which made it easier to rationalize the borrowing. *Id.* Martinez-Diaz and Brainard note that this oil shock pushed Brazil to invest heavily in energy independence, the result being that Brazil now derives 46% of its energy from renewable sources as compared to an average of just 6% in OECD countries. Martinez-Diaz & Brainard, *supra* note 51, at 7–8.

[92] BAER, *supra* note 18, at 90.

[93] *Id.* at 93; Galano, *supra* note 81, at 328. Brazil compounded its problems by ending some export subsidies, thereby exposing the overvaluation of the currency. which the government subsequently devalued gradually. BAER, *supra* note 18, at 93.

[94] Galano, *supra* note 81, at 329; BAER, *supra* note 18, at 100.

[95] Galano, *supra* note 81, at 329; BAER, *supra* note 18, at 100.

[96] The IMF "is an organization of 188 countries, working to foster global monetary cooperation, secure financial stability, facilitate international trade, promote high employment and sustainable economic growth, and reduce poverty around the world." *About the IMF*, INT'L MONETARY FUND, http://www.imf.org/external/about.htm (last visited July 8, 2012).

[97] Galano, *supra* note 81, at 329; BAER, *supra* note 18, at 101. On the debt crisis, see generally Enrique R. Carrasco, *The 1980s: The Debt Crisis & The Lost Decade*, U. IOWA CENTER FOR INT'L FIN. & DEV. E-BOOK, http://blogs.law.uiowa.edu/ebook/uicifd-ebook/part-

The IMF held vast power over Brazil.[98] As conditions to receiving IMF loans, Brazil was forced to devalue its currency, cut public spending, freeze all wages, reduce the level of subsidized credit available, raise taxes, and cut the amount of foreign borrowing by state-owned enterprises.[99] After beginning to implement these reforms in 1983, Brazil's GDP fell four percent, employment fell twelve percent, and inflation rose above two hundred percent.[100]

In 1985, the military regime handed power to a civilian government led by José Sarney, whose main economic task was to control inflation.[101] Though the economic regime the IMF imposed on Brazil in 1982 had successfully lowered Brazil's budget deficit and restored growth by 1984,[102] it did nothing to control inflation; indeed, inflation quadrupled from 1982 to 1986.[103] In the hope of curbing inflation as quickly as possible, Sarney introduced the "*Cruzado* Plan" in early 1986.[104] The plan introduced a new currency (the *cruzado*) and froze prices and exchange rates after de-indexing the economy (prices were no longer pegged to the rate of inflation).[105] Though originally successful, the *Cruzado* Plan had unraveled by February 1987, and inflation returned as strong as ever.[106] By the time Sarney's term ended in 1990, prices were increasing by eighty percent per month.[107]

D. Brazil in the 1990s

The 1990s was a critical decade of reform that set the stage for Brazil's phenomenal growth in recent years. In 1990, Fernando Collor de Mello became the first democratically-elected president of Brazil in nearly thirty

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1-v-1980s-debt-crisis-lost-decade (last visited Jan. 8, 2013).

[98] Galano, *supra* note 81, at 337.

[99] *Id.* at 339–40; BAER, *supra* note 18, at 101.

[100] Galano, *supra* note 81, at 340.

[101] ALBERT FISHLOW, STARTING OVER: BRAZIL SINCE 1985, 34 (2011).

[102] BAER, *supra* note 18, at 102. GDP growth reached 4.5% in 1984 and 8.3% in 1985. *Id.*

[103] FISHLOW, *supra* note 101, at 34.

[104] *Id.* at 36.

[105] *Id.* Sarney looked to Argentina's and Israel's experiences to develop this heterodox shock plan. *Id.*

[106] *Id.* at 38. The *Cruzado* Plan's initial success was ultimately the cause of its failure. After the plan was announced, real money held by businesses and individuals soared, which helped spur consumption and increase imports. Real wages increased along with government spending and overall demand. External factors also drove demand: lower international interest rates, falling oil prices, and a devalued dollar. This rapid increase in demand is what brought inflation back to life, though only after Sarney and his party won an enormous majority in the 1986 elections that took place after real wages had risen but while inflation was still low. *Id.* at 36–38.

[107] *Id.* at 39.

years.[108] His main economic policy goals were price stabilization, privatization, and increasing market competition.[109] He quickly adopted a liberal international trade regime by lowering barriers to imports and privatizing many state-owned businesses[110]—the first of a decade of reform that set the stage for Brazil's current growth.[111] His policies, however, were not effective at containing inflation, which continued to be a problem until 1994[112] when Collor's successor Itamar Franco announced the "*Real* Plan" designed by Minister of Finance, and future President, Fernando Henrique Cardoso.[113]

The *Real* Plan was more comprehensive than any of its predecessors.[114] The Plan introduced a new currency (the *real*), de-indexed the economy, tightened monetary policy, introduced a managed-float exchange rate system, cut spending, and increased taxes.[115] There were also provisions in the Plan to lower tariff barriers for foreign importers whose competition, in theory, would prevent Brazilian monopolies and oligopolies from unilaterally raising prices.[116] Tariffs ultimately fell from an average of fifty-one percent in 1988 to fourteen percent in 1994.[117]

The launch of the *Real* Plan was the first time Brazil showed the economic discipline necessary to attract the foreign capital investments that

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[108] GORDON, *supra* note 17, at 30.

[109] *Id.*

[110] *See* José Luis de Salles Freire & José Emilio Nunes Pinto, *Privatization in Brazil*, 17 HASTINGS INT'L & COMP. L. REV. 689 (1993). Between 1991 and 2001, the Brazilian government sold $110 billion worth of assets to become "privitaziation's poster child." Nevertheless, thirteen of Brazil's one hundred largest firms are still state-owned to this day, including the largest—Petrobras, the behemoth state-controlled oil company. Martinez-Diaz & Brainard, *supra* note 51, at 6.

[111] Juan de Onis, *Brazil's Big Moment: A South American Giant Wakes Up*, 87 FOREIGN AFF. 110, 117–18 (2008).

[112] FISHLOW, *supra* note 101, at 40–41. Collor tried to contain inflation with his own plan, which involved a new currency and a freeze on prices and wages, but his plan failed just as its predecessors had. *Id.*

[113] *See generally id.* at 41–44. Collor was impeached in 1992 on charges of corruption, but resigned before the Brazilian Senate could hold a trial. GORDON, *supra* note 17, at 30.

[114] BAER, *supra* note 18, at 200. The biggest difference was that the *Real* Plan included a fiscal restraint component—the "immediate action plan." Introduced in 1993, the immediate action plan included a $6 billion cut in spending (9% of federal spending), improved tax collection, and forced the state governments to repay loan arrears to get new loan guarantees. *Id.*

[115] FISHLOW, *supra* note 101, at 41–44; BAER, *supra* note 18, at 200; Benedict Clements, *The* Real *Plan, Poverty, and Income Distribution in Brazil*, 1997 FIN. & DEV. 44, 44–45 (1997).

[116] William C Gruben & John H. Welch, *Banking and Currency Crisis Recovery: Brazil's Turnaround of 1999*, ECON. & FIN. POL'Y REV., no. Q IV, 2001, at 12, 13.

[117] *Id.*; BAER, *supra* note 18, at 204 (noting that tariffs fell from 32.2% in 1990 to 14.2% in 1994).

have propelled Brazil's growth.[118] Inflation fell from just over fifty percent in June 1994 to less than one percent in September 1994.[119] Lower inflation has the practical effect of raising real wages by reducing prices, which in turn increases the buying power of wage earners and effectively reduces poverty.[120] Not surprisingly, the Plan pleased the vast majority of Brazilians and propelled Fernando Henrique Cardoso to victory in the 1994 presidential election.[121]

In his first term in office, Cardoso continued the privatization process started by President Collor, stabilized a weak banking sector, and started a conditional income transfer program to help the poor.[122] Though the *Real* Plan is widely considered a success, and President Cardoso is credited with stabilizing the Brazilian economy, he failed to properly address the country's ever-growing fiscal deficit.[123] Concerns over the sustainability of its debt began to arise just as the developing world experienced a series of financial crises.[124] Brazil was not immune from the contagion of the Asian financial crisis of the late 1990s, when speculators bet against the currencies of several countries, successfully forcing those countries to devalue their respective currencies.[125] Brazil's currency came under attack in 1997 due to fears related to the country's large debt.[126] Capital inflows fell dramatically, followed by renewed capital flight after the 1998 Russian bond default.[127] The Russian crisis pushed investors to become wary of EMEs with high debt levels—including Brazil, where it is likely that investors had consistently overlooked high fiscal deficits due to the allure of high interest rates.[128] To stave off speculation and prevent capital outflows, Brazil raised its already-high interest rates, making speculation less profitable and investing in the country more remunerative.[129]

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118 STRATFOR, *Ignore Brazil's Election, Here Are The Real Problems Facing The Country*, BUS. INSIDER (Oct. 5, 2010, 8:00 PM), http://www.businessinsider.com/brazil-geopolitical-situations-2010-10#ixzz1EFD17U2r.

119 BAER, *supra* note 18, at 201. Though inflation went up some throughout the next year, it never went above 5.15% in 1995. *Id.*

120 *Id.* at 203–04, 254. Not surprisingly, consumption rose 16.3% in the first year following the introduction of the *Real* Plan. *Id.* at 203.

121 De Onis, *supra* note 111, at 118.

122 *Id.*; BAER, *supra* note 18, at 211.

123 Gruben, *supra* note 116, at 14; BAER, *supra* note 18, at 205; FISHLOW, *supra* note 101, at 45.

124 Gruben, *supra* note 116, at 14.

125 *Id.* at 14–15. Markets also exerted some pressure on the real during the 1994–95 Mexican crisis, but the pressure quickly faded after Brazil devalued the real slightly in the first half of 1995. BAER, *supra* note 18, at 204–05.

126 FISHLOW, *supra* note 101, at 46.

127 *Id.* at 46–47.

128 BAER, *supra* note 18, at 210–11.

129 Gruben, *supra* note 116, at 13–14; FISHLOW, *supra* note 101, at 46.

The hike in interest rates caused domestic industrial production to fall, which decreased Brazil's exports.[130] Therefore, to pay for necessary imports, Brazil had to borrow and increase its debt even further.[131] The increased indebtedness, combined with President Cardoso's inability to convince the Brazilian Congress to pass fiscal restraint legislation, once again attracted the attention of currency speculators.[132] Brazil then received a $41.5 billion loan from the IMF, the World Bank, and the United States to help it defend against speculators.[133] The loan, of course, came with conditionality.[134] Within one month of receiving the loan, the Brazilian Congress had approved about sixty percent of the required reform measures before reaching an impasse on pension reform.[135] Pressure on the *real* had been easing steadily as Congress instituted the reforms, but capital outflows accelerated immediately following the pension-reform failure.[136] The fatal blow, however, did not come from foreign currency speculators, but rather from former president and then-governor of the state of Minas Gerais Itamar Franco, who announced that the state would no longer repay its debts to the federal government.[137] Capital outflows skyrocketed from already high levels, forcing Brazil to devalue the *real* by nine percent and eventually allowing it to float freely on international markets.[138]

The crisis, however, did not cause a long-lasting disruption of the flow of foreign capital into Brazil.[139] Cardoso's macroeconomic policies had proven to be successful—public sector revenues were rising, which gave Brazil more money to pay its debts, privatization had reduced the losses borne by the state, and increased agricultural production kept food prices stable—all of which helped blunt the effect of the crisis.[140] Banking reforms had forced banks to keep more cash on hand by lowering acceptable leverage rates, ensuring that banks had sufficient capital to pay fleeing investors without causing banks to fail or creating risk to the entire

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[130] Gruben, *supra* note 116, at 15.

[131] *Id.*

[132] *Id.* at 13–15.

[133] *Id.*; BAER, *supra* note 18, at 216.

[134] BAER, *supra* note 18, at 216.

[135] *Id.*

[136] *Id.*

[137] *Id.*; Gruben, *supra* note 116, at 15.

[138] Gruben, *supra* note 116, at 15. The IMF has since admitted that it should have encouraged Brazil to give up its crawling peg exchange rate system earlier, a move the IMF did not take due to lack of internal agreement. FISHLOW, *supra* note 101, at 46–47.

[139] De Onis, *supra* note 28, at 111. Indeed, many observers predicted a near total collapse of the Brazilian economy with the return of double-digit inflation and a six percent decrease in real income. FISHLOW, *supra* note 101, at 47.

[140] De Onis, *supra* note 28, at 112.

banking system.[141]

The crisis quickly subsided and the *real* stabilized.[142] Cardoso was able to finish his second term by capping discretionary spending and raising tax revenues—both of which helped address the longstanding issue of ever-rising debt, but failed to bring the dramatic change necessary to put Brazil's debt problems in the past.[143] Cardoso was constitutionally barred from running for a third term, and was replaced by Luiz Inácio "Lula" da Silva in 2002.[144]

IV. BRAZIL EMERGES

It has only been within the last few years that Brazil has began to reap the benefits of nearly two decades of reform. Brazil's strong performance through the global financial crisis highlighted Brazil's newfound stability. Much of the reason for this strong performance can be traced to a series of specific policy decisions that have attacked glaring issues hindering economic growth. Brazil has improved its infrastructure, eased the demands of burdensome regulatory schemes, and reformed its judiciary with the goal of speeding the judicial process. All of those changes encouraged and facilitated the foreign and domestic investment that has propelled Brazil's economy and set the stage for continued growth in the future.

A. Lula's Presidency and the Global Financial Crisis

It was under Lula that Brazil joined the ranks of emerging economies. Though his politics were generally left-of-center, Lula sought to appease foreign investors during his campaign by promising to honor contracts, protect private property, assert fiscal discipline, and pay off debts.[145] Once in office, he eliminated nearly all concerns by following the orthodox economic path of his predecessor.[146] He also gave the Central Bank greater operational autonomy, thereby promoting the development of policies that

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[141] Gruben, *supra* note 116, at 19–21.

[142] *Id.*

[143] *See* De Onis, *supra* note 28, at 114. The Law of Fiscal Responsibility was passed in May 2000 to comply with the IMF's demands. The law eliminated public sector deficits and restricted the government's ability to incur future debt. FISHLOW, *supra* note 101, at 47.

[144] De Onis, *supra* note 111, at 118.

[145] *Id.* Lula's campaign itself did not convince international markets that he supported orthodox economic policies. In the months leading up to his widely-anticipated election, foreign inflows became shorter-term and the country's base interest rate rose 300 basis points after Lula came in first place in the first election round. FISHLOW, *supra* note 101, at 50.

[146] *Id.* at 119. Indeed, Lula's policies were so orthodox that some referred to his first term as "Cardoso's third term." ROETT, *supra* note 38, at 111.

furthered economic growth instead of political interests.[147] Interest rates fell to six percent (Cardoso had lowered them from twenty percent to ten percent despite having to raise them during the *Real* Crisis), which made it cheaper for Brazilians to borrow money to expand businesses inside and outside Brazil.[148] He also fostered greater ties with other developing countries to help decrease Brazil's dependence on the developed world as a source of consumers for Brazilian products.[149]

Like his predecessors, Lula faced a financial crisis when the 2008 U.S. financial crisis spread globally. However, the crisis was short-lived for Brazil. Brazil's GDP shrank slightly in 2009 before returning to booming growth in 2010, while the U.S. economy was still barely growing in 2011.[150] So why did Brazil handle the crisis so well?

Brazil's strong performance through the global financial crisis is partially attributable to Brazilian banks' low exposure to the U.S. mortgage-backed securities market.[151] Thanks to President Cardoso's reforms, Brazil's banks were unable to expose themselves to as much risk as other banks around the globe.[152] Brazil's banking sector also benefited from having one central regulator—the Central Bank.[153] Some observers argue that having one regulator supervise every aspect of a nation's banking activities is more efficient and effective than systems with multiple regulators responsible for supervising different aspects of the banking sector, as in the United States.[154] Taken in combination, these policies prevented Brazilian banks from suffering losses so substantial as to require large bailouts to stay afloat, unlike their U.S. counterparts.

Brazil also benefited from low unemployment and less dependence on trade with the developed world.[155] Low unemployment and trade ties with the developing world meant that Brazil had access to a large number of

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[147] Knowledge@Wharton, *Lessons from Brazil: Why Is It Bouncing Back While Other Markets Stumble?*, LATIN AM. L. & BUS. REP., Nov. 2009, at 10.

[148] FISHLOW, *supra* note 101, at 80.

[149] Knowledge@Wharton, *supra* note 147.

[150] *GDP Growth (Annual %)*, *supra* note 2.

[151] Knowledge@Wharton, *supra* note 147, at 11.

[152] *Id.*

[153] The Central Bank played a pivotal role during the crisis, tightening monetary policy prior to the Lehman Brothers collapse to limit the inflationary effects of government stimulus spending, then took measures to increase liquidity following the Lehman-induced credit crunch. Mário Mesquita & Mário Torós, *Brazil and the 2008 Panic*, *in* THE GLOBAL CRISIS AND FINANCIAL INTERMEDIATION IN EMERGING MARKET ECONOMIES 113 (Bank for Int'l Settlements, BIS Papers Ser. No. 54, 2010).

[154] HAL S. SCOTT, INTERNATIONAL FINANCE 253 (17th ed. 2010); *but see* Prasad, *supra* note 33, at 5–6 (arguing that the global financial crisis exposed flaws in both the U.K.'s single regulator system and the U.S.'s multiple regulator system).

[155] Knowledge@Wharton, *supra* note 147, at 11.

consumers to keep demand for Brazilian exports high.[156] Those increased ties were a focal point of Lula's foreign policy.[157] It was, therefore, not surprising that China overtook the United States as Brazil's largest trading partner in 2009.[158] Having a diversified profile of consumers made Brazil less dependent on demand from the developed world, meaning demand for Brazilian exports stayed high even as demand in the developed world dropped precipitously.[159]

None of this is to say that Brazil went through the crisis completely unscathed. The government did have to provide a stimulus package amounting to 1.5% of its GDP to spur the economy,[160] but that paled in comparison to the stimulus packages in Japan (fifteen percent of a much larger GDP) and the United States (seven percent of an even larger GDP).[161] Brazil's unemployment rate also rose slightly during the crisis,[162] but has since hit record lows while the developed world continues to struggle with high unemployment.[163]

President Lula da Silva's greatest success may have been his ability to increase Brazil's influence internationally. He led calls for a greater voice for the developing world in the IMF[164] and to shift the main forum for global economic policy discussions from the G-7 to the G-20, which includes EMEs such as Brazil.[165] Both of these calls were successful—the

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156 *Id.* at 10–11.

157 *Id.* at 11. In the 1950s, the United States accounted for 41% of Brazil's exports, but by 1997 that number had fallen to 17.7%. Meanwhile, other Latin American countries saw their share of Brazil's exports rise from 9.7% in 1967 to 26% in 1997. BAER, *supra* note 18, at 229.

158 SECRETARIAT FOR SOCIAL COMMUNICATION, PRESIDENCY OF THE FEDERATIVE REPUBLIC OF BRAZ., TRADE BALANCE – BRAZIL-CHINA TRADE RELATIONS 2 (2011), *available at* http://www.brasil.gov.br/para/press/files/fact-sheet-brazil-china-trade. Brazilian exports to China rose from $1,902 million in 2001 to $30,786 million in 2010. *Id.* Imports from China rose from $1,328 million to $25,593 million during the same period. *Id.* at 6.

159 Knowledge@Wharton, *supra* note 147, at 10–11.

160 *Id.* at 11.

161 Amanda Ruggeri, *A Look at the World's Largest Stimulus Packages Outside the United States*, U.S. NEWS & WORLD REP. (Jan. 5, 2009), http://www.usnews.com/news/articles/2009/01/05/a-look-at-the-worlds-largest-stimulus-plans-outside-the-united-states.

162 Andre Soliani & Diana Kinch, *Brazil's Unemployment Rate Rises to a 10-Month High*, BLOOMBERG (Mar. 26, 2009 10:35 AM), http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aboxHfYwzfus.

163 *Record Low Unemployment Rate in Brazil for 2010*, MERCOPRESS (Jan. 27, 2011, 9:01 PM), http://en.mercopress.com/2011/01/27/record-low-unemployment-rate-in-brazil-for-2010.

164 Fabiola Moura, *Brazil's Lula Says World Bank, IMF Both Need Reforms*, BLOOMBERG (Sept. 23, 2009, 1:28 PM), http://www.bloomberg.com/apps/news?pid=newsarchive&sid=awemHfQATQbY.

165 Gary Duffy, *Brazil Pushes for Bigger G20 Role*, BBC NEWS (Mar. 26, 2009),

IMF recently shifted more voting power to EMEs (including Brazil),[166] and the G-20 became the main global economic forum in 2009.[167]

B. Specific Policies that Have Contributed to Brazil's Emergence

Several policies have played, and continue to play, an important role in Brazil's status as an EME. One such policy is Brazil's emphasis on building the infrastructure necessary to support a diverse and thriving economy. No economy will function at its highest capacity if poor infrastructure—such as bad roads, insufficient sea ports, lack of technology—creates inefficiencies at the various stages of production.[168] Brazil has spent much of its new wealth improving infrastructure with the aim of facilitating future economic growth. The most important of such projects is the "Growth Acceleration Plan" (known by its Portuguese acronym, PAC), authored by current President Dilma Rousseff while she

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http://news.bbc.co.uk/2/hi/7963704.stm.

[166] Press Release, Int'l Monetary Fund, IMF Board of Governors Approves Major Quota and Governance Reforms (Dec. 16, 2010), http://www.imf.org/external/np/sec/pr/2010/pr10477.htm. With the shift, EMEs gained an additional six percent of voting power, while an additional six percent of voting power shifted from overrepresented countries—both developed and developing—to underdeveloped countries. *Id.* The end result is that EMEs have five percent more real voting power than they had before the shift, and all four BRIC countries are now among the ten largest vote holders. *Id.* Brazil's voting share increased from 1.402% to 2.218%. *Id.*

[167] *G20 to be New Global Economy Coordinator*, REUTERS (Sept. 25, 2009, 1:40 AM) http://www.reuters.com/article/2009/09/25/us-g20-role-sb-idUSTRE58O0H820090925. Brazil has not, however, been successful in its demand for a permanent seat on the U.N. Security Council, though the U.K. recently endorsed its campaign. John Paul Rathbone, *UK Backs Brazil Bid for UN Security Council Seat*, FIN. TIMES (Nov. 9, 2010), http://www.ft.com/intl/cms/s/0/6718897e-ec1e-11df-9e11-00144feab49a.html. This failure is due, at least in part, to Brazil's opposition to sanctions against Iran for continuing to pursue a nuclear program, and less so due to any economic failure. Alexei Barrionuevo & Ginger Thompson, *Brazil's Iran Diplomacy Worries U.S. Officials*, N.Y. TIMES, May 14, 2010, at A9, *available at* www.nytimes.com/2010/05/15/world/americas/15lula.html. Brazil has backed away from its support of Iran under President Rousseff. Simon Romero, *Iranian Adviser Accuses Brazil of Ruining Relations*, N.Y. TIMES, Jan. 23, 2012, at A10, *available at* http://www.nytimes.com/2012/01/24/world/americas/ahmadinejad-adviser-accuses-brazil-of-ruining-relations.html. For an argument in support of Brazil becoming a permanent member of the U.N. Security Council, see David A. Bailey, *Pull Up a Seat: Brazil Should Be the Next Permanent Member of the United Nations Security Council*, 17 L. & BUS. REV. AM. 83 (2011).

[168] For example, according to one recent study, Brazilian businesses alone spend R$17 billion each year on unnecessary expenses that arise due to the poor condition of roads, decay and bureaucracy at ports, a lack of railway capacity, and storage expenses caused by unnecessary delays. Renée Pereira, *Infraestrutura precária eleva custo logístico em R$17 bi*, O ESTADO DE SÃO PAULO (Feb. 20, 2012, 9:29 PM), http://economia.estadao.com.br/noticias/economia,infraestrutura-precaria-eleva-custo-logistico-em-r17-bi,103511,0.htm.

was a member of Lula's cabinet.[169]

The "Growth Acceleration Plan" is an umbrella term for thousands of economic development projects across Brazil that began in 2007.[170] The program has several components, but the main goal is to improve the poor infrastructure that has created a pattern of social exclusion.[171] The poor are more likely to live in areas with bad roads, poor public transportation, few available jobs, limited or no access to credit, and no mail or commercial delivery services.[172] These and other issues prevent the poor from fully participating in Brazil's economy. PAC seeks to remedy this problem by building or rebuilding homes and roads, and improving sanitation, sewage, water, and electrical services in the poorest areas of Brazil's cities.[173] To maximize the program's impact, the government hires people living in those neighborhoods to perform the work.[174] This feature simultaneously creates employment in the short-term in areas where unemployment is disproportionately high, while making changes that should help spur long-term economic growth.[175]

Regrettably, there are conflicting reports as to whether the projects are actually being completed.[176] President Lula da Silva denied the negative reports, but admitted that progress had been slower than he hoped, blaming bureaucracy for the delays.[177] The slow progress did not prevent him from

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[169] Gustavo Faleiros, *Brazilian President's Promises Crumble under Weight of Belo Monte Dam*, GUARDIAN (Feb. 1, 2011, 3:00 PM), http://www.guardian.co.uk/environment/blog/2011/feb/01/brazil-dilma-rousseff-hydroelectric-dam.

[170] FISHLOW, *supra* note 101, at 75; Susan Schaller, *Lula's Growth Acceleration Program: The Best that Brazilian Funding Can Buy?*, COUNCIL ON HEMISPHERIC AFF. (June 5, 2008), http://www.coha.org/lula%E2%80%99s-brazilian-growth-acceleration-program-the-best-that-government-funding-can-buy/.

[171] Schaller, *supra* note 170. The plan originally called for a $235 billion investment in infrastructure improvement. There were also components meant to address Brazil's high regulatory burden. *See infra* text accompanying notes 217–224; FISHLOW, *supra* note 101, at 75.

[172] Schaller, *supra* note 170.

[173] *Id.* PAC's focus is not only on social inclusion. The infrastructure investment is separated into three categories, including a category addressing these social needs. *Id.* The other two categories are meant to address general road reconstruction, port and airport building, and energy production, respectively. *Id.* The social infrastructure accounts for $170.8 billion ($34.8 billion from the federal government), general infrastructure $58.3 billion ($38 billion from the federal government), and energy $274.8 billion (none of which came from the federal government). FISHLOW, *supra* note 101, at 75–76.

[174] Schaller, *supra* note 170.

[175] *Id.*

[176] *Id.*

[177] *See* Ihssane Loudiyi, *Brazil Announces Phase Two of the Growth Acceleration Program*, WORLD BANK (Mar. 30, 2010, 9:38 AM), http://blogs.worldbank.org/growth/node/8715. As of the beginning of 2010, only three-fifths

announcing an $872 billion extension (PAC II) to the program in March 2010, when PAC I was only fifty percent completed.[178] The goal of PAC II is to increase the country's energy production capacity, build two million new homes (to cut the estimated housing deficit to three million homes), and make infrastructure improvements for the 2014 World Cup and 2016 Olympics to be held in Brazil, including building a high-speed rail to connect Brazil's two largest cities, Rio de Janeiro and São Paulo.[179] Once completed, these projects should greatly expand Brazil's economic potential for years to come.

Brazil has further facilitated its economic ascension by opening itself to the world through new international trade and foreign investment policies. Since the mid-1990s, Brazil has consistently lowered its import tariffs while modernizing its overall import system (customs inspections, payments, etc.), making it cheaper and easier for foreign countries and companies to sell their products in Brazil.[180] Due to these changes, Brazil's imports have consistently increased, helping balance Brazil's current account surplus.[181]

The amount of foreign direct investment flowing into Brazil has steadily increased since President Cardoso introduced the *Real* Plan in 1994[182] thanks, in part, to the high investment returns associated with fast growth and high interest rates.[183] Brazil's policies have played a role as well. To begin, a national treatment standard ensures that foreign and domestic investors are treated equally.[184] Unlike many countries, Brazil does not set a maximum or minimum level for foreign investments, it allows foreign companies to fully remit profits abroad, and it does not evaluate the potential effects of investments on the national economy or ensure that the country will somehow benefit before approving investments, which makes it easier and more profitable for foreigners to invest in Brazil,

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of total PAC resources had been spent, which says nothing about the actual completion of projects to which funds had been dispersed. FISHLOW, *supra* note 101, at 77.

[178] Loudiyi, *supra* note 177. Investment in the energy sector makes up about seventy percent of the Plan. FISHLOW, *supra* note 101, at 77.

[179] Loudiyi, *supra* note 177. The extension includes $600 billion for energy investments ($255 billion from 2011 to 2014) and $152 billion for housing construction. *Id.*

[180] DEMAREST E. ALMEIDA, BUSINESS LAWS OF BRAZIL 112, 132 (2009).

[181] *Id.*

[182] *World Development Indicators,* WORLD BANK, http://www.google.com/publicdata?ds=wb-wdi&met=bx_klt_dinv_cd_wd&idim=country:BRA&dl=en&hl=en&q=foreign+direct+investment+in+brazil (last visited Oct. 26, 2012).

[183] *See* BAER, *supra* note 18, at 255 (noting the general increase in the flow of foreign capital to EMEs). The stabilization of the real, which reduced the cost of doing business in Brazil, along with the large privatization program and rapid decrease in tariffs have all also contributed to the growth in FDI. *Id.*

[184] ALMEIDA, *supra* note 180, at 61.

thereby increasing overall investment.[185]

Brazil's large and sophisticated national exchange further facilitates foreign investment.[186] In 2008, the São Paulo Stock Exchange merged with the mercantile and futures exchange to form BM&FBOVESPA, the largest exchange in Latin America[187] and the fourth-largest exchange in the world,[188] with a market capitalization of $1.546 trillion.[189] Disclosure requirements for listing on this exchange are on par with markets around the world, giving investors confidence that all relevant information is available.[190] All of these and other efforts have made it easier, safer, and more profitable for foreigners to invest in Brazil.[191]

Lastly, as Brazil has grown, it has made a concerted effort to improve government institutions to make them more efficient for both Brazilians and foreign investors. Most important among these reforms, at least as far as encouraging investment is concerned, has been reforming the judicial system.[192] A 2006 constitutional amendment mandated judicial reform and made judicial expeditiousness a constitutional guarantee—an important step for a traditionally slow legal system.[193] In 2007, the country passed a law that allows decisions from the Federal Supreme Court (the highest constitutional court in Brazil) to have precedential value if two-thirds of the justices concur.[194] This change will prevent the courts from having to decide the same issue repeatedly, making the entire system faster. An efficient judiciary is cheaper and enforces rights more reliably—two factors

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[185] *Id.* at 61–69.

[186] *See* Edmund Amann, *Technology, Public Policy, and the Emergence of Brazilian Multinationals*, *in* BRAZIL AS AN ECONOMIC SUPERPOWER? 187, 197–98 (Lael Brainard & Leonardo Martinez-Diaz eds., 2009).

[187] ALMEIDA, *supra* note 180, at 35.

[188] Robert Ellison & Claudio Oksenberg, *The São Paulo Exchange – Towards A Regional Hub?*, 17 LATIN AM. L. & BUS. REP. 8, 8 (2009).

[189] *Brazil*, CIA WORLD FACTBOOK, https://www.cia.gov/library/publications/the-world-factbook/geos/br.html (last updated Dec. 19, 2012).

[190] DEMAREST, *supra* note 180, at 49–51.

[191] Amann, *supra* note 186, at 198 (highlighting two new laws as also playing an important role in encouraging foreign investment). The "Lei das S.A." ("Corporations' Law") is meant "to improve corporate governance practices in medium-size enterprises with the aim of . . . breathing new life into domestic private capital markets." *Id.* The law also improves the rights of minority shareholders, as does the "Novo Mercado" ("New Market") policy issues by BOVESPA). *Id.*

[192] Juan Carlos Botero et al., *Judicial Reform*, 18 WORLD BANK RES. OBSERVER 61, 61 (2003) ("Markets . . . depend on the establishment of an environment in which legal rights, especially property and contractual rights, are enforced and protected . . . .") (citations omitted).

[193] Sergio Sardenberg & Francisco A. Fabiano Mendes, *Investing in Brazil – Latin America's Powerhouse*, 17 LATIN AM. L. & BUS. REP. 13, 16 (2009).

[194] *Id*; FISHLOW, *supra* note 101, at 17. The law (súmula vinculante) is meant to encourage consistency as much as efficiency. FISHLOW *supra* note 101, at 187.

of keen interest to foreign investors.[195]

V. CHALLENGES AHEAD

Though Brazil has made substantial progess towards economic development in the last two decades, several challenges remain. When Lula handed power over to his successor, Dilma Rousseff (the first female president of Brazil), his approval rating was over 80% and the economy had just grown by an estimated 7.5% in 2010.[196] He had increased spending near the end of his term (ostensibly for political reasons), heightening fears of inflation,[197] but President Rousseff promised fiscal restraint while continuing Lula's policy of allowing the Central Bank to operate autonomously to control inflation.[198] The promise to cut spending, along with a promise to cut the nation's high interest rates, is what investors believe is necessary to ensure that inflation does not derail Brazil's current growth.[199] President Rousseff's first major political victory—getting the legislature to agree to a lower-than-desired raise in the minimum wage—surely pleased investors as it showed a commitment to reducing spending.[200] Nevertheless, Rousseff's presidency has seen its share of turbulence thus far.[201] Economic growth slowed to below three percent in 2011, inflation rose and remains above the Central Bank's target, and a series of corruption scandals shifted the focus away from economic reforms.[202]

President Rousseff and her successors face a number of challenges as Brazil seeks to propel itself forward as an emerging economy. First is the danger of excessive spending, which contributes to high interest rates (making borrowing more expensive), currency appreciation (hurting

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[195] Messick, *supra* note 34, at 121.

[196] Albert Fishlow, *Brazil: What's Next?*, AM. SOC'Y, Winter 2011, *available at* http://www.americasquarterly.org/node/2096.

[197] Knowledge@Wharton, *supra* note 147, at 12.

[198] *Brazil*, *supra* note 189.

[199] Joe Leahy & Samantha Pearson, *Brazil Bares Budget Cuts to Damp Inflation*, FIN. TIMES (Feb. 10, 2011, 2:54 AM), http://www.ft.com/cms/s/0/68b09184-3492-11e0-9ebc-00144feabdc0.html.

[200] Sílvio Guedes Crespo, *Imprensa internacional destaca 1ª vitória chave de Dilma*, O ESTADO DE SÃO PAULO (Feb. 17, 2011), http://blogs.estadao.com.br/radar-economico/2011/02/17/imprensa-internacional-destaca-1%C2%AA-vitoria-chave-de-dilma/.

[201] Paulo Sotero, *Brazil's President Dilma Rousseff Makes Her Mark*, BBC NEWS (Dec. 29, 2011, 3:58 PM), http://www.bbc.co.uk/news/world-latin-america-16288184.

[202] *Id.* The decreased economic growth is more a result of the ongoing European sovereign debt crisis than any Brazilian policy. Additionally, inflation has fallen in recent months. *Id.* Though the corruption scandals have distracted political discussion, Rousseff's willingness to fire high-level officials accused of corruption has made her extremely popular—her approval rating is currently above seventy percent—which may help her build support around her economic reform goals in the future. *Id.*

exporters by raising the cost of goods produced domestically), and a complex tax system (raising compliance costs, and in turn, business costs)—all of which are currently problems in Brazil.[203]

Second, Brazil continues to depend too heavily on commodity exports (mainly food and oil) to drive growth.[204] Like excessive spending, commodity exports put upward pressure on the domestic currency by attracting both foreign currency through investment in commodity sectors and the hard currency needed to purchase the exports.[205] The appreciated currency negatively affects other sectors of the economy—in Brazil's case, the manufacturing sector whose products are now more expensive and, therefore, less competitive globally—making the country even more dependent on commodities over time.[206] Brazil appears poised to expand its dependency on commodity exports as it recently discovered huge oil reserves[207] and has made enormous investments in its ethanol and agricultural sectors.[208] These commodities are currently as profitable as they have ever been for Brazil, but that may have more to do with a global food shortage and over-speculation in the oil markets driving prices up than with any economic wisdom of the Brazilian government.[209] The

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[203] *Small Earthquake in Brazil's Planalto*, FIN. TIMES (Feb. 3, 2011, 8:33 PM), http://www.ft.com/cms/s/0/10dc0994-2fcd-11e0-91f8-00144feabdc0.html#axzz1DbqqHTV7. Spending is also troublesome in that it contributes substantially to indebtedness. Indebtedness is a problem because it forces countries to spend foreign reserves on debt servicing rather than maintaining a balance-of-payment equilibrium, it increases the cost of borrowing over time, and it gives more bargaining power to foreign creditors when attempting to make policy changes. BAER, *supra* note 18, at 233–34.

[204] STRATFOR, *supra* note 118. Iron, oil, sugar, soy, meat, and coffee make up forty-seven percent of Brazilian exports. Luiz Guilherme Gerbelli, *Seis produtos são responsáveis por metade das exportações brasileiras*, O ESTADO DE SÃO PAULO (Mar. 11, 2012, 8:59 PM), http://economia.estadao.com.br/noticias/economia,seis-produtos-sao-responsaveis-por-metade-das-exportacoes-brasileiras,105640,0.htm.

[205] STRATFOR, *supra* note 118. Commodity dependency also leads to increased volatility due to more frequent price shocks, and has been associated with poor governance and a higher likelihood of civil war. Paul Collier, *Primary Commodity Dependence and Africa's Future*, *in* ANNUAL WORLD BANK CONFERENCE ON DEVELOPMENT ECONOMICS 2003: THE NEW REFORM AGENDA 139, 140–48 (Boris Pleskovic & Nicholas Stern eds., 2003); *but see* Nanae Yabuki & Takamasa Akiyama, *Is Commodity-Dependence Pessimism Justified?* (World Bank, Policy Research Working Paper No. 1600, 1996) (arguing that commodity dependence is not always correlated with low growth).

[206] STRATFOR, *supra* note 118.

[207] *Brazil's Offshore Oil: In Deep Waters*, ECONOMIST, Feb. 5, 2011, at 48, *available at* http://www.economist.com/node/18065645.

[208] Sara Miller Llana, *Farming Superpower Brazil Spreads its Know-How*, CHRISTIAN SCI. MONITOR (Nov. 12, 2008), http://www.csmonitor.com/World/Americas/2008/1112/p01s01-woam.html.

[209] STRATFOR, *supra* note 118; *see also* Rob Clarfeld, *After the Gold Rush—Commodities Prices: Why So High?*, FORBES (June 14, 2011, 1:17 PM), http://www.forbes.com/sites/robclarfeld/2011/06/14/after-the-gold-rush-commodities-prices-

government plans to put new oil profits in a sovereign-wealth fund to prevent increased spending from further pushing up the value of the *real*, but whether it will adhere to that policy long-term is yet to be determined.[210] For the time being, an overvalued currency has already negatively affected Brazil's manufacturing sector and forced the government to take strong action.[211]

Corruption in Brazil is another major challenge.[212] Transparency International, a non-governmental organization that measures corruption throughout the world, ranks Brazil the seventy-third least corrupt country out of one hundred eighty-three countries.[213] The roots of corruption are far too complex to fully explain here,[214] but it is important to note the contribution Brazil's political structure plays in producing corruption. Brazil's political system is such that it allows more than twenty political parties to participate in elections.[215] These parties are in a constant scramble for government money in the form of welfare benefits, government jobs, and contracts that would help influence voters—a scramble that leads to corruption and waste that inhibit efficiency and productivity.[216]

Third, continuing issues with Brazil's regulatory and legal framework impede foreign investment by making it riskier and more expensive to do

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why-so-high/ (arguing that high commodity prices are the result of investors looking for somewhere to "park" the excess liquidity that has come about due to loose monetary policies globally, especially in the United States over the past few years).

[210] *Offshore Oil*, *supra* note 207.

[211] Joe Leahy, *Brazil Vows to Protect Manufacturing*, FIN. TIMES (Mar. 16, 2012), http://www.ft.com/intl/cms/s/0/b1d9f05a-6f8b-11e1-b368-00144feab49a.html. Automotive production declined thirty percent from December 2011 to January 2012. *Id.* The government has offered manufacturers temporary tax breaks out of a fear that manufacturers will cut payrolls to try to maintain competitiveness. *Id.* Large payroll cuts would have a negative effect on domestic consumption—an important aspect of economic growth. *Id.*

[212] Corruption is problematic because of the distorting effect it has on investment allocation. *See* Nauro F. Campos et al., *Corruption as a Barrier to Entry: Theory and Evidence* (Ctr. for Econ. Policy Research, Discussion Paper No. DP8061, 2010), *available at* http://ssrn.com/abstract=1711074 (arguing that corruption in the form of bribery by public officials limits the number of firms seeking to enter a given market).

[213] *Corruption Perceptions Index 2011*, TRANSPARENCY INT'L, http://cpi.transparency.org/cpi2011/results (last visited Jan. 10, 2013).

[214] For an in-depth discussion of the roots of corruption globally, see Vito Tanzi, *Corruption Around the World: Causes, Consequences, Scope, and Cures*, 45 STAFF PAPERS – INT'L MONETARY FUND 559 (1998).

[215] De Onis, *supra* note 111, at 117–20. The proliferation of political parties can be traced to the 1950's, when both global concerns about the capitalist model and national concerns regarding regional inequality began to appear and fracture long-standing political parties based on more specialized interests. ROETT, *supra* note 38, at 49.

[216] De Onis, *supra* note 111, at 120.

business in Brazil.[217] The National Federation of Industries termed these extra costs of doing business in Brazil the "*Custo Brasil*" ("Brazil Cost").[218] Principal among these costs is the high tax burden mentioned above.[219] Taxes represent thirty-six percent of Brazil's GDP compared to only eight percent in China.[220] But besides the high tax burden, Brazil's tax code is extremely complex, making compliance a lengthy and expensive process.[221] Brazil ranked 150th in the World Bank's "Doing Business" ranking in terms of ease of paying taxes.[222] It took the World Bank's hypothetical company 2,600 hours to fully comply with the tax laws, which would be a costly endeavor.[223]

Cumbersome regulations also make starting a business an expensive ordeal. Regarding the ease of stating a new business, the World Bank study ranked Brazil 120th in the world.[224] It takes an average of one hundred nineteen days to register a business in Brazil, compared to the regional average of fifty-four days.[225]

A slow and inefficient judiciary adds to the *Custo Brasil*. Brazil's courts simply have too large of a caseload to function quickly or efficiently.[226] Though the courts have never been known as exemplars of efficiency, caseloads have skyrocketed since the country approved the

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[217] *See* Alvaro Cuervo-Cazurra, *Who Cares About Corruption?*, 37 J. INT'L. BUS. STUD. 807 (2006) (arguing that corruption results in a reduction in FDI, especially from countries that have signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

[218] Don Sull, *Brazil: Why it was the Country of the Future that Always Would Be*, FIN. TIMES (July 27, 2010 5:59 AM), http://blogs.ft.com/donsullblog/2010/07/27/brazil-why-it-was-the-country-of-the-future-that-always-would-be/. According to one estimate, the average net margin in Latin America is 10.5%, but it is only 5.4% in Brazil, which has led to the conclusion that "Brazil is a high-growth market in terms of opportunities for revenue expansion but it is on average a low-margin market in terms of profitability, particularly for companies in the start-up phase." Joseph Leahy, *The High Price of Booming Brazil*, FIN. TIMES (Feb. 20, 2012, 7:39 PM), http://www.ft.com/cms/s/0/89e9e40c-5991-11e1-abf1-00144feabdc0.html.

[219] Sull, *supra* note 218.

[220] *Id.*

[221] DEMAREST, *supra* note 180, at 94.

[222] WORLD BANK, DOING BUSINESS 2012: BRAZIL 72 (2012).

[223] *Id.* at 73.

[224] *Id.* at 16.

[225] *Id.* at 17. Brazilians have a sense of pride of sorts in finding ways around these regulatory costs, referring to the process of avoiding regulations as "jeitinho." *Business: The Brazilian Model; Schumpeter*, ECONOMIST, Nov. 18, 2010, at 76, *available at* http://www.economist.com/node/17522484. "Jeitinho" is a play on the word "jeito," meaning path or way. *Id.*

[226] Keith S. Rosenn, *Judicial Review in Brazil: Developments under the 1988 Constitution*, 7 SW. J.L. & TRADE AM. 291, 311 (2000).

current constitution in 1988 that grants extensive personal rights.[227] The increase in cases is also attributable to the highest court's broad original mandatory jurisdiction.[228] Of special concern to foreign investors, the highest court must approve all requests for recognition of a foreign judgment.[229] Despite having taken steps towards strengthening the concept of controlling precedent to lower the caseload, it is estimated that ninety percent of the highest court's caseload consists of questions that it has already decided.[230] A former president of the Supreme Tribunal attributes the high judicial caseloads to the government's bad faith refusals to pay judgments, instead choosing to appeal cases indefinitely to delay payment.[231]

Lastly, inequality is possibly the most commonly known threat to Brazil's progress. In spite of Brazil's phenomenal growth, inequality is still an impediment: the World Bank has estimated that for every ten percent increase in poverty there is a corresponding one percent reduction in economic growth.[232] For Brazil, this means that economic growth could increase by two or three percentage points each year by eliminating poverty.[233] Currently, the top ten percent of the population accounts for forty-three percent of total consumption, while the bottom ten percent makes up just under one percent of Brazil's total consumption.[234] While CEOs in São Paulo make more money than CEOs in New York City,[235] over ten million Brazilians live on less than $1.25 per day.[236]

Brazil's inequality is not a new phenomenon. It is generally blamed

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[227] *Id.* ("In the first eight years following promulgation of the 1988 Constitution, the number of cases filed in Brazilian courts increased by more than a factor of ten, from about 350,000 cases in 1988 to more than 3.7 million in 1996.").

[228] *Id.* at 311–12. In 2000, the highest court received 105,307 cases and decided 86,138, compared to deciding only 17,432 in 1989. The U.S. Supreme Court decided just 115 cases during the 1999–2000 term. *Id.*

[229] *Id.* at 312. This requirement even includes approval for uncontested divorces. *Id.*

[230] *Id.* at 313. As Rosenn highlights, the repetitive and conflicting nature of decisions is not a necessary result of having a civil as opposed to common law tradition. There are many examples of civil law systems that work more efficiently than the Brazilian system. *Id.*

[231] *Id.* Despite all of these problems, it is worth noting that at least one observer has credited the strength of Brazil's democracy since 1985, in part, to the quality of the judiciary. FISHLOW, *supra* note 101, at 187.

[232] Coatsworth, *supra* note 41, at 8.

[233] *Id.*

[234] *Brazil*, *supra* note 189.

[235] *The Americas: Top Whack; Executive Pay in Brazil*, ECONOMIST, Jan. 27, 2011, at 35, *available at* www.economist.com/node/18010831 (noting that in 2010, the CEOs in São Paulo earned an average of over $600,000 per year, while CEOs in New York City earned an average of about $580,000 per year).

[236] *See Brazil Country Profile: Human Development Indicators*, U.N. HUM. DEV. REPS., http://hdrstats.undp.org/en/countries/profiles/BRA.html (last visited Jan. 10, 2013).

on unequal educational attainment and unequal land distribution, both of which have their roots in the colonial era.[237] During the colonial era, there was little need for education in areas heavily populated with slaves, therefore, there was no educational infrastructure in those areas when slavery finally ended in 1888.[238] The educational attainment gap has only grown since that time.[239] Wealthier, white Brazilians have continuously dominated politics and have chosen to invest Brazil's money in the whiter southern part of the country, while generally ignoring the more heavily black and indigenous populations of the north, with the same disparities seen in cities throughout the country.[240]

To compare Brazilian student achievement to student achievement in the developed world, President Cardoso entered the country into the Program for International Student Assessment run by the Organization for Economic Cooperation and Development (OECD), an international organization comprised almost exclusively of developed countries.[241] Brazil now ranks fifty-third out of sixty-five countries, although it initially came in last place when fewer countries participated, a mediocre result even by Latin America's lower education standards.[242] What marginal improvements there have been can be attributed to President Cardoso's decision to mandate minimum per-pupil spending and teacher salaries along with the "*Bolsa Família*" ("Family Scholarship") program.[243] President Rouseff has already targeted improving the educational attainment of

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[237] Clements, *supra* note 115, at 46.

[238] Coatsworth, *supra* note 41, at 4–8.

[239] *Id.*

[240] *Id.*

[241] *The Americas: No Longer Bottom of the Class; Education in Brazil*, ECONOMIST, Dec. 11, 2010, at 47, *available at* http://www.economist.com/node/17679798.

[242] OECD, PISA 2009 RESULTS: EXECUTIVE SUMMARY 8 (2010), *available at* http://www.oecd.org/pisa/pisaproducts/46619703.pdf. Among Latin American countries, Colombia, Mexico, Uruguay, Trinidad and Tobago, and Chile ranked above Brazil, while Argentina, Peru, and Panama trailed Brazil. *Id.*

[243] *No Longer Bottom of the Class*, *supra* note 241. Brazil still spends only a small amount per-pupil, especially in poorer areas, which receive less funding than other areas. FISHLOW, *supra* note 101, at 190. Besides funding, poor quality teachers are an issue in Brazil as well. To become a teacher in Brazil, a university student is not required to take courses on teaching skills or the subject matter they eventually teach, studying the philosophy of education instead. *Id.* Few people consider this to be the best way to train effective teachers. Nearly half of São Paulo's teachers fail to meet the minimum standards required to receive a permanent contract. *Id.* "Bolsa Família" is actually the umbrella term Lula created in 2003 when he expanded and combined the Bolsa Escola, Bolsa Alimentação, and other social programs created by Cardoso in 1999 following the *Real* Crisis. After combining the programs, Lula also increased their reach, nearly doubling the reach of the program from 6.5 million families to 11 million in less than two years. Marcelo Neri, *Income Policies, Income Distribution, and Distribution of Opportunities*, *in* BRAZIL AS AN ECONOMIC SUPERPOWER? 221, 242 (Lael Brainard & Leonardo Martinez-Diaz eds., 2009).

Brazilian workers by introducing the new "Science Without Borders" scholarship program, which will send 100,000 Brazilians to top universities abroad by 2015 to study subjects the government believes are important for economic growth, mainly hard sciences and engineering.[244]

A poor education system is related to Brazil's land distribution problem. The issue is most evident in Brazil's largest cities where squatters have illegally taken up residence on any open space they can find.[245] These illegal settlements have grown into entire neighborhoods, called "favelas," where hundreds of thousands of people live with almost no government services, including schools.[246] The residents of these neighborhoods (usually minorities) lack title to their land and, therefore, lack what many people consider their most valuable asset.[247] The residents also face gross discrimination from employers, banks, and oftentimes the police just because of their address.[248] The favelas are often overrun by drug gangs and usually lack basic services like running water and electricity.[249] Though the government has made progress in recent years against the gangs,[250] the problems facing the favelas will not be solved any time soon, which will continue to effectively exclude favela residents from participating in the formal economy.

One of Brazil's most important policy goals has been to increase participation in economic activities by reducing poverty. It has done so through the well-known "*Bolsa Família*" program.[251] President Cardoso designed the program—with technical and financial support from the World

[244] *Studying the World; Education in Brazil*, ECONOMIST, Mar. 17, 2012, at 46, *available at* http://www.economist.com/node/21550306. A similar program in the 1960s and 1970s paid Brazilians who earned Ph.D.s in oil exploration, agricultural research, and aircraft design—three areas in which Brazil is now a world leader. *Id.* The country hopes the new program will have similar results. *Id.*

[245] Ermínia Maricato, *Urbanismo na periferia do mundo globalizado: metrópoles brasileiras*, 14 SÃO PAOLO EM PERSPECTIVA 21, 30 (2000), *available at* http://www.scielo.br/pdf/spp/v14n4/9749.pdf (providing a detailed explanation for the rise of favelas throughout Brazil).

[246] Schaller, *supra* note 171.

[247] UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME, ENHANCING URBAN SAFETY AND SECURITY: GLOBAL REPORT ON HUMAN SETTLEMENTS 2007, at 187 (2007), *available at* http://www.unhabitat.org/pmss/getElectronicVersion.aspx?nr=2432&alt=1.

[248] Schaller, *supra* note 171; Rosenn, *supra* note 226, at 151.

[249] Myrna Domit & Alexei Barrionuevo, *Brazilian Forces Claim Victory in Gang Haven*, N.Y. TIMES, Nov. 28, 2010, at A4, *available at* http://www.nytimes.com/2010/11/29/world/americas/29brazil.html.

[250] *Id.*

[251] *Bolsa Família: Changing the Lives of Millions in Brazil*, WORLD BANK, http://web.worldbank.org/WBSITE/EXTERNAL/PROJECTS/0,,contentMDK:21447054~menuPK:64282137~pagePK:41367~piPK:279616~theSitePK:40941,00.html (last visited Nov. 12, 2012).

Bank—as a way to reduce current poverty and break the cycle of poverty.[252] Through the program, poor families receive money each month (about $35) on the condition that they keep their children in school and take them for regular health checkups, with the hope being that those children will grow up to be healthy, educated workers capable of supporting themselves and their families without government assistance.[253] Eleven million families (approximately forty-six million people) benefit from the program.[254]

The program has generated wealth at a grassroots level, with ninety-four percent of the funds going to the poorest forty-percent of Brazilian society—most of whom had never benefited from social programs before.[255] It allows recipient families to consume more (studies show that most of the money is spent on food, school supplies, and clothes for children), which has created a trickle up effect in which Brazilians sellers benefit from having more customers, and producers benefit from selling larger quantities of their products.[256] The program has given a large boost to rural economies and has increased the federal and state tax bases.[257] From 2001 to 2008, the inequality gap shrank by six percent—the largest improvement in Latin America—and millions of people have been lifted out of poverty, indicating that the program is working.[258]

VI. CONCLUSION

As illustrated above, Brazil's economic evolution has brought the country to a point where observers regard it as an important emerging economy gaining voice in global political and economic affairs. The critical question is how Brazil will exercise its voice. As illustrated by the Lula quotation at the outset of this Article, calls arose for a New International Economic Order (NIEO) in the aftermath of the 2008 global financial crisis.

An NIEO is not a new concept. It first arose in the 1970s and quickly became a highly controversial—and eventually unsuccessful—effort to effectuate the principle of sovereign equality of states by reforming international economic law and policy.[259]

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[252] *Id.*

[253] *Id.*

[254] *Id.*

[255] *Id.*

[256] *Id.*

[257] Sardenberg & Mendes, *supra* note 193, at 15–16.

[258] Alexei Barrionuevo, *Strong Economy Propels Brazil to World Stage*, N.Y. TIMES, July 31, 2008, at A1, *available at* http://www.nytimes.com/2008/07/31/world/americas/31brazil.html?pagewanted=all.

[259] In May 1974, the U.N. General Assembly adopted two resolutions that would form the basis of the NIEO: the "Declaration on the Establishment of a New International Economic Order," and the "Programme of Action on the Establishment of a New

In December 2009, the UN passed a resolution entitled, "Towards a New International Economic Order."[260] The essence of the resolution was to reaffirm the principles set forth in the NIEO resolutions of the 1970s. The vote was 108 in favor to none against with fifty-two abstentions.[261] Those countries voting in favor were developing countries throughout the world, including EMEs such as Brazil, Russia, India, and China. The developed countries abstained, including the United States. In explanation of its vote, the United States noted that while it supported "the goal of moving toward a world in which all nations enjoy the benefits of broad, inclusive, and sustainable economic growth," the resolution failed to offer

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International Economic Order." *See* G.A. Res. 3201 (S-VI), U.N. Doc. A/RES/3201 (May 1, 1974) (adopting the "Declaration on the Establishment of a New International Economic Order"); G.A. Res. 3202 (S-VI), U.N. Doc. A/RES/5-6/3202 (May 1, 1974) (adopting the "Programme of Action on the Establishment of a New International Economic Order").

In December 1974, the General Assembly adopted a re-articulation of the Declaration and Programme in a resolution titled, "Charter of Economic Rights and Duties of States." *See* G.A. Res. 3281 (XXIX), U.N. Doc. A/RES/3281 (Dec. 12, 1974). In 1975, the U.N. restated these ideals in another resolution after recognizing the movement had lost momentum. *See* Lima Declaration and Plan of Action on Industrial Development and Co-operation, U.N. Doc. E/RES/1953(LIX)ID/B/155/Add.1 (July 25, 1975).

Among other things, the Global North claimed that the NIEO ideology was hypocritical considering the domestic politics of many developing countries. The NIEO saw its mission as just, imperative, and humane, while many NIEO countries were simultaneously violating human rights and economically oppressing their citizens. Charles Ries, *The NIEO: The Skeptics' Views*, *in* THE NEW INTERNATIONAL ECONOMIC ORDER: CONFRONTATION OR COOPERATION BETWEEN NORTH AND SOUTH? 63, 66 (Karl P. Sauvant & Hajo Hasenpflug eds., 1977). Many of these countries were not democracies, yet they insisted that intergovernmental institutions become more democratic, specifically the IMF and World Bank whose voting systems the NIEO thought purposely biased against it. Peter B. Kenen, *Debt Relief as Development Assistance*, *in* THE NEW INTERNATIONAL ECONOMIC ORDER: THE NORTH-SOUTH DEBATE 50, 52–54 (Jagdish Bhagwati ed., 1977). Ultimately, there was considerable dispute over the legal significance of the NIEO. In response to the Global South's claims that the NIEO reflected customary international law, critics argued the nonbinding resolutions were merely moral or political statements, at best constituting "soft law." *See* Amr A. Shalakany, *Arbitration and the Third World: A Plea for Reassessing Bias Under the Specter of Neoliberalism*, 41 HARV. INT'L L.J. 419, 461 (2000) ("[T]he NIEO documents . . . were denied the status of customary law . . . . [T]hus the Charter was declared to be a 'political rather than a legal declaration . . . .'") (citations omitted). Ultimately, the deep divisions between the North and South left much of the NIEO's business unfinished. It met a quiet death (or lapsed into a coma) after the late 1970s. *See* Michael P. Ryan et al., *International Governmental Organization Knowledge Management for Multilateral Trade Lawmaking*, 15 AM. U. INT'L L. REV. 1347, 1372 (2000) ("The GATT's attempts to solve the economic problems of developing countries in the 1960s and 1970s [through the NIEO] were largely feeble.").

[260] Press Release, Second Committee Forwards 11 Drafts to General Assembly, on New Global Economic Order, Agricultural Technology for Development, Climate Change, Among Others, U.N. Press Release GA/EF/3273 (Dec. 4, 2009), *available at* http://www.un.org/News/Press/docs/2009/gaef3273.doc.htm.

[261] *Id.*

"fresh thoughts" and "innovative thinking."[262] The United States and other countries that abstained for these same reasons are right. Trying to resurrect the NIEO of the 1970s is based on a failed paradigm.

President Lula may well be right that a moral imperative calls for a new economic order. Given it's economic, social, and political evolution, Brazil is in a good position as an EME to draw attention to the need to begin a global dialogue aimed at articulating a framework for a new order. To sustain its voice, however, Brazil must continue to address the challenges identified in this Article.

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[262] *Id.*